

[REDACTED] (RMD) (FBI)

From: [REDACTED] (RMD)(FBI)
Sent: Tuesday, April 19, 2011 1:32 PM
To: [REDACTED] (RMD) (FBI)
Subject: FW: Possible Lapse in Appropriations - Update

This may be responsive to the pending FOIA you will receive from [REDACTED]

[REDACTED]
Unit Chief, Work Process Unit
Winchester, VA, Room M 20
[REDACTED]
Records Management Division
Records Information Dissemination Section

From: HQ_RECORDS_MANAGEMENT_DIV
Sent: Tuesday, April 05, 2011 9:49 AM
To: HQ-DIV17-ALL EMPLOYEES; HQ-DIV17-CONTRACTORS
Subject: Possible Lapse in Appropriations - Update

We are all aware of ongoing news reports predicting the possibility of a government lapse in appropriations. The current Continuing Resolution, which provides for the continuation of funding for FBI's programs, will expire on April 8, 2011. No one knows with certainty whether the government will shutdown. However, we are continuing to work actively with the Human Resources Division (HRD) and Finance Division to address required staffing needs should the funding laps occur.

As previously stated, no one knows with certainty whether a shutdown will occur. However, we have reached the point where we must plan for the shutdown in a worst case scenario. If they haven't already, your section leadership will be discussing with you over the next several days the staffing plan for your area. Some of you will be considered "excepted" from furlough and expected to work during any shutdown. Those who are not considered "excepted" from furlough will be precluded from working and will be out of the office for the duration of the furlough. Some of you may get "called back" to perform a vital function should the need arise. Call backs will be extremely rare and will only be considered in the most critical circumstance.

In order to further prepare for a possible shutdown, the following information will be helpful to you:

Outside Employment

Even while on furlough, FBI employees are still employees of the government and standards of conduct (5 CFR Part 2635) which include rules on outside employment continue to apply. Outside employment requests must be approved and vetted through the RMD Security Unit. This process will not change during furlough. If you wish to work outside employment during a furlough, you should complete the attached form and either drop it off to the guard staff at the ICRC or fax it to the Security Unit at [REDACTED]. Additional outside employment forms will be available from the guard staff at the ICRC during furlough for your convenience. Employees outside the ICRC commuting area may call [REDACTED] to obtain additional forms.



fd-331b.pdf

Unemployment Compensation

It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit questions to the appropriate state office. The SF-8 Notice to Federal Employee Regarding Unemployment Compensation is attached for your convenience. A supply of these forms will also be available from the guard staff at the ICRC during furlough for your convenience. Employees outside the ICRC commuting area may call [redacted] to obtain additional forms.

- Maryland—www.dllr.state.md.us or (800) 827-4839
- Virginia—www.vec.virginia.gov or (866) 832-2363
- District of Columbia—www.does.dc.gov or (877) 319-7346
- West Virginia—www.wv.gov or (304) 558-2624
- Pennsylvania – www.uc.pa.gov or (717) 783-3140

SF 8 Unemployment
Compensation...

WebTA

All furloughed employees will automatically be carried in a LWOP-Furlough status for the duration of a furlough. Excepted employees who are working during furlough should continue to capture time worked on the time card in WebTA. Additional WebTA information will be provided as it becomes available.

Leave During Furlough

All paid leave during a furlough is cancelled. During furlough, all employees are considered as LWOP-furlough. (See HRD Furlough FAQs Q32.)

Payroll

Only employees who are excepted from the furlough are permitted to work during a government shutdown. Excepted employees will not be paid for work performed during the shutdown unless an appropriation is enacted. For furloughed employees, there is a possibility that they will not be paid at all for the time that they are in furlough status.

Contract Staff

Some contracts may continue during furlough. Contract staff should consult both government and company representatives for details.

Furlough Information Lines/Employee Communication

HRD's Furlough Information Hotline is 202-324-3333. In addition, in the event of furlough, RMD will utilize the weather information line, 540-545-2815, to provide furlough information to RMD employees. All RMD locations will be able to obtain information from this line.

Unit Chiefs or designee will initiate calling trees as appropriate to communicate any furlough information that becomes available after hours.

Employees can continue to send questions to the Administrative Unit mailbox HQ_DIV17_ADMIN. If we have the answers, your questions will be answered as soon as possible pre-furlough and post-furlough. Please note that the Administrative Unit will not be staffed during furlough so any questions received during a furlough will not be addressed until we are back to work.

Attached is a link to HRD's Furlough FAQs. Also, within the next several days, we will provide you answers to questions we've received that are not addressed by these FAQs.

Link to HRD's Furlough FAQs: <http://home.fbinet.fbi/pages/employee.aspx>

Unfortunately, there is no further definitive information to provide. **Further, please do not assume that a furlough is imminent based on this email.** This information is being provided to you proactively so it's readily available in the event there is a government shutdown.

RMD management recognizes that these are stressful times for all of us. But, we will support one another as we always do and get through it together. The Employee Assistance Program remains available for help with this and other stressful situations our employees may be experiencing. [REDACTED] is available by email or by calling [REDACTED] or [REDACTED] (Blackberry) should you need assistance pre- or post- furlough. Administrative Unit Staff will be on furlough if a shutdown occurs.

You are highly encouraged to print this email and all attachments.

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM

UNEMPLOYMENT INSURANCE (UI) FOR FEDERAL WORKERS

TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM

GENERAL INFORMATION:

1. WHO WILL PAY UNEMPLOYMENT BENEFITS?

If you are eligible, you will be paid by a State employment security agency under the provisions of its unemployment insurance (UI) law. The amount of your regular weekly benefits and the period for which benefits will be paid will generally be determined by the law of the State in which you had your last Official Duty Station. This Duty Station will be printed on your final "Notification of Personnel Action", SF-50. If you have received all the regular benefits for which you are eligible, you may, under certain circumstances, become eligible for additional weeks of extended benefits; check with a State local office official. If your last duty station was outside the United States, you will not be eligible until you return to the United States, including the District of Columbia, Puerto Rico, and Virgin Islands. Your benefit rights will then be determined under the law of your State of residence.

UCFE/UI for unemployed Federal workers is paid from U.S. Government funds. No deductions were taken from your pay to finance these benefits.

2. UNDER WHAT CONDITIONS WILL I BE ELIGIBLE?

All State UI laws require that:

- a. You must be unemployed, able to work, and available for suitable work; (In some cases, you may be eligible if you are employed less than full time);
- b. You must register for work and file a claim at a local public employment service/UI claim office;
- c. You must continue to report to the office as directed; and
- d. You must have had a certain amount of employment/wages within a base period of 1 year specified in the State law and have been separated through no fault of your own.

All State UI laws will deny you benefits for such reasons as:

- a. Quitting your job voluntarily without good cause or being discharged for misconduct connected with work; or
- b. Refusing an offer of a suitable job without good cause.

Some State UI laws deny or reduce UI benefits for certain types of payments you may receive (retirement, severance, and/or lump-sum amount for unused, accrued annual leave).

3. DO I HAVE THE RIGHT OF APPEAL?

Yes. If a determination is made denying you benefits, you have the right to appeal as provided in the applicable State law.

4. ARE THERE ANY PENALTIES?

Yes. If you willfully make a false (fraudulent) claim, you may be fined, imprisoned, or both. If you make a mistake in giving information when you file your claim, notify the local UI claim office as soon as you discover the mistake: prompt notification may avoid a penalty.

(The above statements are issued for general information; they do not have the effect of law, regulation, or ruling).

IF YOU BECOME REEMPLOYED and have been collection UCFE/UI benefit payments, it is your RESPONSIBILITY to notify the local office, in writing, to discontinue paying benefits now that you are employed. Failure to do so may result in a penalty such as a fine, imprisonment, or both.

TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM

NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE

This form has been given to you because (1) you have been separated from your job, or (2) you were placed in a nonpay status, or (3) your records have been transferred to a different payroll office.

Unemployment insurance (UI) for Federal workers. When unemployed, Federal workers may be entitled to UI benefits similar to those of workers in private industry. If you become unemployed or are in a nonpay status and want to FILE A CLAIM, go to the nearest LOCAL PUBLIC EMPLOYMENT SERVICE OFFICE of the STATE EMPLOYMENT SECURITY AGENCY to register for work and file your claim for UI. Your ELIGIBILITY for UI CANNOT be determined until AFTER you file a claim. DO NOT DELAY filing a UI claim; if you wait, your unemployment benefits may be reduced or you may not qualify for any benefits.

To help EXPEDITE your claim, take THIS FORM with you, your SOCIAL SECURITY ACCOUNT NUMBER CARD, the OFFICIAL NOTICE of your most recent SEPARATION or of your present NONPAY status (Standard Form 50 if available), EARNINGS and LEAVE statements, or similar documents that indicate you were employed by a Federal agency.

FEDERAL AGENCY will insert
in the box:

1st line - Parent Federal Agency
Name and 3 digit code number
2nd line - Major Component (if
any)
3rd and 4th line - complete
address to which all forms
pertaining to a claim should be
sent (ES-931, 931A, 934, 936, and
notices of appeal, hearings, and
determinations)

3 Digit
Identification
FEDERAL AGENCY

FBI/DOJ

CODE NO.
431

935 Pennsylvania Avenue, NW

Washington, DC 20235

To be completed by the Federal
Agency:

Contact Name/Office
HR Help Line
FBIHQ

Telephone No. (include area code)
202-324-3333

KEEP THIS FORM and **TAKE IT WITH YOU** if you file a UCFE/UI claim for unemployed Federal workers provided by Federal law (U.S. CODE, Title 5, Chapter 85). For more information about UCFE/UI, read the REVERSE SIDE of this form.

FEDERAL BUREAU OF INVESTIGATION

Support Employee Request to Engage in Outside Employment

Precedence:**Date:**

To: Division Head
Via: Division Security Officer

From:**Forwarded by (Supervisory Chain):****Case ID #:**

The undersigned employee seeks Bureau authority to engage in outside employment. The employee acknowledges the following:

- ☐ That any proposed outside employment shall not interfere with Bureau duties, will not be incompatible with the FBI's National Security or Law Enforcement mission, nor will it inhibit, hinder or impede the faithful performance of my duty.
- ☐ That any approval made here does not allow solicitation of any approved business at any time on Bureau premises.
- ☐ That my outside employment will not be started until officially approved.
- ☐ That the proposed outside employment will not capitalize on my official position nor the FBI name, initials, Seal or Badge.
- ☐ That I cannot engage in outside employment during any portion of a day when I am on sick leave, without prior FBI approval.
- ☐ That I cannot submit to a polygraph examination in connection with the proposed outside employment.
- ☐ That if approved, I will notify my supervisor when the employment terminates or any facts regarding the employment are materially changed. I will use Form FD-331a to provide written advice of the termination of any approved employment.
- ☐ That if authority to enter into this employment is not granted, I will not communicate the FBI decision to any prospective employer.

Information Concerning Prospective Employment (Completed by Employee)

Name of employer or firm, and name of owner or manager (if firm not well known or if not readily obtainable). Include identifying information (Name, DOB, POB, SSAN) about the prospective employer. (Note: If this information is solicited from the individual, then the requestor should inform that person that it will most likely be used by the FBI to perform a background check.)

Descriptive data of contemplated employment: _____

Address of employer or firm and address where employee will be working, if not the same: _____

General nature of business: _____

Name of any organization(s) to which employee will belong incidental to employment: _____

Proposed Job Title: _____ Proposed Duties (in detail): _____

Bureau working hours: From: _____ To: _____ EOD Date: _____ Bureau work record: _____

Hours of proposed outside employment: From: _____ To: _____ on Days of Week: _____
 From: _____ To: _____ on Days of Week: _____

Additional Information: _____

Employee's Signature _____ Date: _____

Field Office or HQ Unit Chief Action

Indices check (The cognizant Field Office or HQ Unit Chief, as applicable, should complete this action)

- ☐ Prospective employer and/or firm well known, of good repute, and indices check was not deemed as necessary.
- ☐ Indices check made on above-named employer or firm, results are NEGATIVE.
- ☐ Indices check made on above-named employer or firm, results are as follows: _____

Division Head Use Only

☐ Approval Granted ☐ Approval Denied

 SAC, Cognizant HQ AD, or Designee

Date: _____

PRIVACY ACT DISCLOSURE

The personally identifiable information solicited on this form is collected pursuant to Department of Justice Order 30-65 and Title 5, Code of Federal Regulations, Section 735.201 which states that an employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of the person's government employment.

PURPOSES AND USES

Pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, we are providing the following information on principal purposes and routine uses. The principal purpose for collecting the information is to determine the suitability of your intended outside employment and to keep the FBI informed of the status of your outside employment. This information may be shared within the Department of Justice and the FBI with those who have a need for access in the performance of their official duties. It may also be shared with other agencies for purposes of conducting a law enforcement investigation, of determining an individual's suitability and/or trustworthiness for employment, with courts or other adjudicative bodies when disclosure is relevant to a proceeding, with contractors or consultants performing work for the Bureau, and with the National Archives and Records Administration for record keeping purposes.

EFFECTS OF NON-DISCLOSURE

Provision of this information is voluntary; however, failure to provide the requested information may result in your request for outside employment being denied. In the event you fail to keep the FBI advised of the status of your employment with an outside entity, administrative action may be taken against you.

INSTRUCTIONS FOR COMPLETING THE FORM

- The cognizant Divisional or Field office Security officer should coordinate the routing of this request, including ensuring that a copy of the completed document is sent to the Security Division for review and retention.
- Regulations and statutes prevent the Division Head or the HRD DAD from approving outside employment: With a foreign government (or foreign government controlled entity like a university); involving the practice of law; law enforcement outside the FBI; requiring a polygraph; or employment with another Federal Agency.
- The Security Officer and the employee's supervisor should be counseled to be aware of any noticeable negative changes in the employee's health, availability or work performance that may be related to approved employment.
- This form is not required for an employee to manage their personal or family brokerage or bank accounts, management rental properties that are not part of a business, for volunteer "employment" with local civic and commercial organizations, for occasion sales of "hobby" items, or for occasional services provided for no or minimal compensation (e.g., babysitting/lawn cutting not part of a business).
- Final approval of the requested outside employment precludes the necessity of the employee needing to acquire approval to engage in activities with outside organizations under section 3.9.7 and, likewise, approval under that section constitutes approval under this section.
- Inform the employee of the decision within 15 business days of providing all required information.
- The Division Head or HRD DAD may consult with the cognizant CDC or the Administrative Law Unit in OGC with any questions regarding the requested outside employment, approval or procedures.
- The employee shall be counseled that:
 - They are responsible to inform the Security Officer or their supervisor of any material changes to their employment that may require review of their employment.
 - The employee must check/acknowledge the items listed on the terms listed on the front of this document.
 - The approval can be withdrawn by the approval authority.
 - That approval does not amount to endorsement of the employer nor does it amount to approval of any behavior prohibited by other law, regulation or rule.

SHUTDOWN AND FURLOUGH: QUESTIONS AND ANSWERS

This document provides all FBI personnel with basic information and guidelines about the possible Federal government-wide shutdown and a related furlough of employees. Since certain information and guidelines may change as decisions on the Federal budget are made, please periodically check for any updates to keep current. Thank you.

<u>General</u>	<u>Requests for Leave During Furlough</u>
<u>Employee Coverage</u>	<u>Leave without Pay (LWOP) in Lieu of Furlough</u>
<u>Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough</u>	<u>Continuation of Pay (COP)</u>
<u>Pay and Deductions from Pay</u>	<u>Payments Upon Separation from Federal Service</u>
<u>Service Credit for Various Purposes</u>	<u>Performance Awards and Within-Grade Increases</u>
<u>Retirement and Insurance Benefits</u>	<u>Documentation of Furlough</u>

General

Q1. Where do I find information about the status of the federal government shutdown and about when I should return to work while I am in a furlough status?

A1. Contact the HRD Call Center, (202) 324-3333. The recorded message will be updated daily with the status of the shutdown. Employees should call in and listen to public broadcasts to determine if the Federal government is still shut down. Once employees hear that the government shutdown has ended, employees are expected to report to work on their next regular duty day.

Q2. What is a "furlough"?

A2. A "furlough" is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

Q3. What type of furlough is it?

A3. A "shutdown" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not excepted by Office of Management and Budget (OMB) standards. The DOJ, of which the FBI is a component, is operating under a Continuing Resolution that will expire Friday, April 8. At that time, appropriations will lapse until Congress passes another continuing resolution or the FY 2011 appropriation.

Q4. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30-calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A4. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

OPM's position that this regulation be applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987).

Q5. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A5. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is *not required* that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

Employee Coverage

Q6. What is the difference between an "excepted employee" and an "emergency employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

A6. The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations--e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or that require agencies to close all or part of their activities.

Q7. Which employees are "excepted" from a "shutdown" furlough at the FBI?

A7. All employees assigned to Field Offices and Legal Attaché Offices and all employees participating in New Agents Training and the Intelligence Basics Course are excepted from a government furlough. FBI headquarters management is in the process of determining which headquarters personnel will be excepted from a government furlough.

However, depending on the length of time the government is shut down, furloughed employees may be recalled by their division/office management, as necessary, as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Q8. If, during a lapse in appropriations, federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?

A8. *Excepted* employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in a

furlough status. Therefore, division management may change the status of employees as additional needs arise. In addition, if an excepted employee is unable to report for work because of emergency conditions, he or she must be placed in a furlough status until such time as the employee reports for work.

Q9. How do I know that I have been placed in a furlough status?

A9. Your division/office management will provide you a letter, which you must sign and date (in acknowledgement), stating that you have been placed in a nonpay, nonduty (i.e., furlough) status. Your division/office will retain the signed letter.

Q10. How do I know that I am excepted from a furlough?

A10. Your division/office management will notify you (verbally or by email) that you have been excepted from a furlough.

Q11. Are individuals appointed by the President subject to furlough?

A11. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 6301 and attendant regulations governing leave in the federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his/her entire salary is recorded for tax purposes. The following exception must be noted: former career Senior Executive Service (SES) appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Q12. What about persons working for federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A12. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-federal organizations on appointments to the federal government are subject to furlough in the same manner as other employees.

- Personnel on detail to federal agencies from non-federal organizations may continue working, provided that the non-federal organizations pay the total costs of the detail.
- Personnel on detail to federal agencies from non-federal organizations that share part of the costs of detail may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q13. Would employees who are detailed or assigned outside the FBI during part, or the entire period, of furlough be subject to furlough?

A13. Employees on a reimbursable detail from the FBI would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, these employees would be subject to furlough. The FBI may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-federal organizations and who are on leave without pay from their federal positions may continue working during a furlough period.

Q14. How is the number of furlough hours for alternative work schedule (AWS) employees determined during a "shutdown" or "emergency" furlough? Can an employee reschedule a nonworkday that occurred during a furlough?

A14. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations. Since FBI policy dictates that employees' schedules must be established in advance of the administrative work week, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the administrative work week begins.

Q15. If I am an employee who has veterans preference, what are my rights if I have been placed in a furlough status?

A15. Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If an employee has the right of appeal to MSPB and wishes to appeal this action to the MSPB, the employee must file the appeal within 30 calendar days after the

effective date of his/her furlough. If the employee wishes to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough

Q16. May employees take other jobs while on furlough?

A16. Even while on furlough, an individual is an employee of the government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes that prohibit certain outside activities. Employees who are furloughed may request outside employment consistent with FBI policy. If interested in seeking outside employment, employees must comply with the procedures for requesting outside employment contained in section 4.8.5. ("FBI Policy on Outside Employment") of the *FBI Ethics and Integrity Program Policy Implementation Guide*.

Q17. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A17. No. Unless otherwise authorized by law, the FBI may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Q18. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A18. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

Q19. Are employees entitled to unemployment compensation while on furlough?

A19. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit their questions to their appropriate state office.

❖ Maryland—www.dllr.state.md.us or (800) 827-4839

❖ Virginia—www.vec.virginia.gov or (866) 832-2363

❖ District of Columbia—www.does.dc.gov or (877) 319-7346

❖ West Virginia—www.wv.gov or (304) 558-2624

Pay and Deductions from Pay

Q20. If a furlough begins during the middle of a pay period due to a lapse of appropriations, will employees receive pay for the portion of the pay period worked prior to the furlough effective date?

A20. Under the current Office of Management and Budget (OMB) guidance, yes, employees will receive pay for the hours worked. The minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to process pay, including processing pay for the portion of the pay period prior to the government shutdown.

Q21. As a furloughed or excepted employee, will I be paid for work performed during a government shutdown?

A21. Only employees who are excepted from the furlough are permitted to work during a government shutdown. Excepted employees will not be paid for work performed during the shutdown unless an appropriation is enacted. For furloughed employees, there is a possibility that they will not be paid at all for the time that they are in furlough status.

Q22. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?

A22. The order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions can be found in the National Finance Center (NFC) Bulletin: Title I, 10-6, New Order of Precedence for Calculating Net Pay, dated April 15, 2010. See http://i2i.nfc.usda.gov/Publications/All_Title_1/title 1-10-6.pdf.

Q23. Can employees obtain a loan from their Thrift Savings Plan (TSP) account while furloughed? What happens if an employee has a TSP loan and is placed in a nonpay status?

A23. According to TSP Fact Sheet 11-5 *Impact of a Federal Government Shutdown on the Thrift Savings Plan*, dated March 4, 2011, employees may be eligible to obtain a loan from their TSP account while furloughed. As to current TSP loans, employees should refer to the same Fact Sheet for more information. This issuance is available from the TSP web site at <http://www.tsp.gov/>.

Service Credit for Various Purposes

Q24. Is furlough or leave without pay (LWOP) considered a break in service?

A24. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes. (See Q25.)

Q25. To what extent does nonpay status affect civil service benefits and programs?

A25. Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) is credited as follows:

- For career tenure, the first 30 calendar days of each nonpay period is creditable service.
- For completion of initial probation, an aggregate of 22 workdays in a nonpay status is creditable service.
- For X-118 qualification standards, there is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- For time-in-grade requirements, nonpay status is creditable service.
- For retirement purposes, an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- For health benefits, enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303(e)). The government contribution continues while employees are in a nonpay status. The government also is responsible for advancing from salary the employee share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.
- For life insurance, coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401(c)) or to the agency (5 CFR 870.401(d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- For within-grade increases, an aggregate of 2 workweeks nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406(b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay

status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417(b)).

- For annual and sick leave, when a full-time employee accumulates 80 hours of nonpay status, the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period (5 CFR 630.208). For purposes of computing accrual rates for annual leave, creditable service for time in a nonpay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 6303(a) and 8332(f)).
- For severance pay, nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the *computation* of an employee's severance pay fund under 5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service. (This is the same rule used in crediting nonpay status time as "service" in determining annual leave accrual rates.)
- For the Thrift Savings Plan (TSP), employees should refer to the TSP Fact Sheet 11-5 *Impact of a Federal Government Shutdown on the Thrift Savings Plan*, dated March 4, 2011. The Fact Sheet is available from the TSP web site at <http://www.tsp.gov/> from a home or UNet computer.
- For military duty or workers' compensation, nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of federal employment for all purposes upon the employee's return to duty.

Retirement and Insurance Benefits

Q26. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A26. Generally, there will be no effect on the high-3 average unless a furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.

Q27. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A27. Yes.

Q28. What happens if employees cancel Federal Employee Health Benefit (FEHB) coverage while in a nonpay status in order to avoid the expense?

A28. Employees who cancel FEHB coverage to avoid payment of premiums while in a nonpay or reduced-pay status do not have to wait for an FEHB open season to re-enroll. Cancellation of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

Q29. What will happen to employees who would have retired during a shutdown?

- A29.** For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, when the lapse in appropriations ends, the FBI will make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the Human Resources Division, Retirement Unit (RU) (even if put under the main RU door). Any additional required paper work, such as the formal retirement application form, may be completed when the government reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the FBI.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the Human Resources Division to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee of a right granted by statute or regulation.

Q30. Will my health benefits continue while the government is shut down?

- Q30.** FEHB enrollment continues for no more than 365 days in a nonpay status. The Government contribution continues while employees are in a nonpay status. The Government also is responsible for advancing from salary the employee's share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

Q31. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

- A31.** Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Requests for Leave During Furlough

Q32. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A32. The answer to both questions is yes. All paid leave during the government shutdown is cancelled. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be cancelled and employees must be either (1) at work performing excepted activities or (2) furloughed.

Q33. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" furlough? May *excepted* employees be granted new requests for paid leave during a lapse in appropriations?

A33. No. When an employee is not at work and performing the duties determined by the division/executive management to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

(1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

Q34. Typically, due to the timing of a "shutdown" furlough and the standard administrative work schedule of most employees, employees are required to report for work on the day on which a "shutdown" furlough begins. How should agencies determine the number of work hours and the number of furlough hours for each furloughed employee?

A34. OPM recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each furloughed employee works on the day a furlough begins. If an employee is on approved leave on the day the furlough takes effect,

both excepted and furloughed employees should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a furloughed employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the furloughed employee had previously been scheduled to take paid leave later in the day. An agency may subsequently terminate the furlough if the employee's services are required for excepted activities.

Q35. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

A35. An employee who is on approved leave without pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. Consistent with law and regulations, the LWOP taken under the FMLA is part of the 12-week entitlement. However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q32) Since the paid leave was cancelled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

Leave Without Pay (LWOP) in Lieu of Furlough

Q36. May agencies permit employees to use Leave Without Pay (LWOP) in place of furlough?

A36. Yes, in certain situations agencies may permit employees to elect to take LWOP instead of being furloughed. However, agencies may not require employees to request LWOP.

Q37. If an employee is scheduled to take approved leave without pay (LWOP) during a "shutdown" furlough, should the employee continue to be charged LWOP during the period of furlough?

A37. Yes. Furloughed employees scheduled to take preapproved LWOP during a "shutdown" furlough will continue to be charged LWOP during the furlough period, unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

Continuation of Pay (COP)

Q38. If employees are receiving continuation of pay (COP) due to job-related injuries, can the COP be terminated or interrupted by furlough?

A38. No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

Q39. Are employees who are injured while on furlough or leave without pay (LWOP) eligible to receive workers' compensation?

A39. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Payments Upon Separation from Federal Service

Q40. If there is a "shutdown" furlough as a result of a lapse in appropriations, may employees who are separating prior to the expiration of the continuing resolution receive a lump-sum payment for their unused annual leave? Are the funds paid out of the current continuing resolution or the new annual appropriation's monies?

A40. The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. For example, if an employee separates on April 8, 2011, the money to pay the lump-sum annual leave payment is covered under the current continuing resolution.

In the event of a lapse in appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of government operations. This may include the processing of payroll for the pay periods prior to the lapse in appropriations. A minimum number of payroll staff may be excepted from furlough for the minimum time required to process pay, including processing lump-sum annual leave payments paid from funds obligated before a lapse in appropriations.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

Q41. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?

A41. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the government of the United States. (Severance pay is suspended or terminated when the individual is

reemployed by the federal government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the federal government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as pay for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of agency operations, severance pay covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted. Once an appropriation is in place, the employee will receive the severance pay he or she would have received had the lapse not occurred. (Note: A lapse will not affect severance payments if an appropriation is enacted before the pay date for any severance payment covering the pay period in which the lapse occurred.)

Performance Awards and Within-Grade Increases

Q42. If performance management plans require the payment of performance awards to employees, can the payment be delayed until after a furlough?

A42. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If performance management plans require the payment of performance awards, payment may be delayed until after the furlough when funds are available.

Q43. Can within-grade or step increases for employees be denied or delayed?

A43. Within-grade and step increases for employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a General Schedule employee in step 1, 2, or 3 of the grade who is furloughed for more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406 (b)).

Documentation of Furlough

Q44. How is time on furlough and leave without pay documented?

- A44.** An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough (or a list form of notification for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is necessary only for return from a consecutive furlough. (See Chapters 15 and 16 of *The Guide to Processing Personnel Actions*.)

For members and former members of the uniformed services who are subject to the "pay cap" reporting procedures, a copy of the furlough notice, and of the return to duty notice when one is issued, must be sent to the appropriate uniformed service finance center (addresses of the centers are in Chapter 8 of *The Guide to Processing Personnel Actions*), since days in nonpay status will affect the person's retirement pay. When an SF-50 or a list form of the notice is issued to document a furlough, the copy of the notice which is sent to the pay center must have the employee's SSN and DOB and dates of furlough added to it to ensure proper adjustment of his/her retirement pay.

- Q45. If I am in furlough status or excepted from a furlough, how do I input my time in WebTA?**
- A45.** Furloughed employees should be entered on the timecard as "LWOP-Furlough". For those designated as "excepted" from a furlough, time should be entered by the employee on the timecard as regular base pay for days worked. Additional WebTA guidance will be forthcoming.



HUMAN RESOURCES DIVISION FURLOUGH PREPARATIONS PLAN

APRIL 25, 2011

☐ **Assemble Working Group**

- Customer Service Section Chief: WebTA, Communications, Call Center
- HRD Front Office: Strategic Analysis and Implementation Unit, Policy Analysis and Management Office, Law Enforcement and Intelligence Community Liaison
- Recruitment Selection and Staffing Section Chief
- Executive Development and Selection Section Chief
- Office of Medical Services Section Chief
- Finance Division POC

☐ **Establish Communication with External Entities**

- Obtain direct communication with DOJ/JMD POCs
- Maintain direct communication with FBI budget POCs

☐ **Research existing OMB, OPM and DOJ Guidance & Historical FBI Materials**

- Review FY 2011 Furlough Contingency and Preparations Binder

☐ **Formulate FBI Contingency Plan**

- Export Employee Records from BPMS onto HRD SharePoint Site
 - Organized by division, cost code, name, grade, functional title, positional title, excepted/furloughed and justification
- Instruct divisions to identify excepted positions/employees using OMB, OPM and DOJ criteria and provide justification for excepted designations (by division)
- Review division responses and make recommendations to HRD Executive Leadership
- Provide totals and percentages of excepted and furloughed employees and justifications to DOJ

☐ **Prepare HRD Communications Plan**

- Draft email communication to the field offices and legat offices, if excepted from furlough
- Prepare instructions to divisions for identifying excepted employees
- Draft all-employee email communications (pre-, mid-, and post-furlough periods)
- Develop FAQs, if necessary, and update, as necessary
 - Regarding employee status, benefits, leave, pay, outside employment, etc.
- Prepare Furlough Notice Letter and coordinate printing (if necessary) with ITSD
- Prepare FBIHQ excepted employee email communication
- Brief and provide FBI Division Heads and Executive Management
 - Checklist/Timeline for Furlough Period
 - Instructions to Divisions (for "shutdown day")
 - Furlough Notice Letter
 - SF 8 "Unemployment Compensation for Federal Employees (UCFE) Program: Notice to Federal Employee About Unemployment Insurance
 - FAQs

[REDACTED] (HRD) (FBI)

From: BENNETT, DAVID G. (HRD) (FBI)
Sent: Friday, February 25, 2011 6:29 PM
To:

Cc:

Subject: FBI Headquarters Furlough Plan

Importance: High

Given that the current Continuing Resolution, which provides for the continuation of funding for FBI's programs, will expire on March 4, 2011, there is a possibility of a government shutdown due to a lapse in appropriations. While we do not believe a government shutdown will occur, we must be proactive in ensuring the FBI has a plan in place to address staffing needs should the government shutdown.

The Human Resources Division (HRD) is in the initial phase of preparing a personnel contingency plan for a government shutdown. Therefore, HRD is requesting each division to review its personnel and identify employees who fall into the following categories:

- 1.) Necessary for the safety of human life or the protection of property in which the Government has an interest. In order to determine whether employees fall into this category, the following test should be applied: First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the

performance of the function in question. For example, activities that directly support law enforcement, criminal investigations and national security functions.

- 2.) Support the orderly suspension of FBI operations during a government shutdown.
- 3.) Funded either with no-year or multi-year money or with appropriations, the availability of which is not depended on annual appropriations acts (e.g., user fees). This may include reimbursable funding received from other agencies that is either no-year, multi-year, or transferred from a funding source that is not annually appropriated.

The information received from each division will be scrutinized by HRD and the Associate Deputy Director to determine the number of employees who will be excepted from the furlough, and therefore, required to work during a government shutdown. Please note excepted employees will not be paid for work performed during the shutdown until after an appropriation is enacted. All other employees will be furloughed while the government is shutdown. Please note there is a possibility that furloughed employees will not be paid for the time that they are furloughed.

Please click here to access the FBI Furlough Plan SharePoint site: <http://home/teamsites/HRD/GSP/default.aspx>. The "Excepted: Yes/No" column must be completed using the "Yes/No" drop down menu. The "Justification" column must be completed using one of the three categories noted above; indicating number 1, 2, or 3 in the "Justification" column is sufficient. Please complete the required information for your division by **1PM on Monday, February 28, 2011**. Once you have updated your division's information, please contact [redacted] at [redacted]. For additional information, please contact [redacted] at [redacted].

We will keep you advised as information becomes available. Information about funding, contracts and contractors will be provided by Finance Division. The Finance Division point-of-contact is [redacted] at [redacted].

Thank you,

Dave Bennett

DAD, HRD

BENNETT, DAVID G. (HRD) (FBI)

To: [REDACTED] (HRD) (FBI)
Subject: FW: Field Office Guidance on a Potential Government Shut-down

Message to SACs.

From: BLADEN, ANTHONY M. (DO) (FBI)
Sent: Friday, February 25, 2011 1:15 PM
To: [REDACTED] (HRD) (FBI)
Cc: BENNETT, DAVID G. (HRD) (FBI)
Subject: FW: Field Office Guidance on a Potential Government Shut-down

Anthony Bladen
Assistant Director
Human Resource Division
202-324-3514

From: HARRINGTON, T. J. (DO) (FBI)
Sent: Friday, February 25, 2011 7:06 AM
To: FBI SAC's; [REDACTED]
Cc: [REDACTED]
Subject: JOHN (DO) (FBI)
Subject: Field Office Guidance on a Potential Government Shut-down

I know each of you is attempting to address employee and our partner questions and interest on the FBI's status if the US Government is shut-down next Friday. I cannot provide any greater context to the possibility of the shut-down beyond the daily media reporting. As some background, the current Continuing Resolution (CR) will expire at midnight Friday 3/4/11. The last time this happen was in 1995 and the USG was shut-down for a total of 27 days. A shut-down simply means there is an absence of appropriations. As a result we will be required to decide on which activities we perform that are "essential." Those essential activities will continue during the shut-down. Depending on the length of the shut-down we would be required to adjust that level of operation. We have not received specific guidance from DOJ or the Administration on the potential shut-down. However, past guidance had allowed us to continue operations that involve the safety of human life or the protection of property. Our understanding and interpretation of the laws that govern this activity allows our activities to be excepted from a shut-down when providing for the national security and/or performing functions relating to criminal investigations and administrative and other direct support activities. Therefore, we have determined that, for the short-term, and in the absence of any additional guidance from DOJ, field office operations – all field office employees and activities, would be excepted from the government shut-down. In other words you would continue all your activities during a shut-down. While I do not anticipate this determination to change, I trust you understand and appreciate the ambiguity surrounding an event like this and that this guidance may change. We are in the process of determining which FBIHQ activities are covered under the past exception criteria. We are expecting a new CR to extend the government operations beyond next Friday, but we must plan for all possibilities. I will keep you updated as new information becomes available. If you have any questions please feel free to give me a call. Thanks tom

[REDACTED] (HRD) (FBI)

From: BENNETT, DAVID G. (HRD) (FBI)
Sent: Friday, March 04, 2011 5:05 PM
To:

Cc:

Subject: FBI Headquarters Furlough Contingency Plan

In preparation for a possible government shutdown, HRD previously requested your assistance in developing the FBI's personnel contingency plan. Specifically, HRD requested each division to review its personnel and identify employees who fall into the following categories:

- 1.) Necessary for the safety of human life or the protection of property in which the Government has an interest. In order to determine whether employees fall into this category, the following test should be applied: First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question. For example, activities that directly support law enforcement, criminal investigations and national security functions.
- 2.) Support the orderly suspension of FBI operations during a government shutdown. For example, processing personnel actions; processing pay for the period(s) prior to a lapse in appropriations; limiting obligations incurred to those needed to maintain the minimum level of essential activities necessary for the safety of human life or the protection of property; inventorying property and records; etc.

- 3.) Funded either with no-year or multi-year money or with appropriations, the availability of which is not depended on annual appropriations acts (e.g., user fees). This may include reimbursable funding received from other agencies that is either no-year, multi-year, or transferred from a funding source that is not annually appropriated.

The information we obtained from each division was used to determine the number of FBI employees who will be "excepted" from a furlough, and therefore, required to work during a government shutdown.

Since then, the President has approved an extension of the current Continuing Resolution (CR) which provides for the continuation of funding for FBI programs until March 18, 2011. However, there is still a possibility of a government shutdown due to a lapse in appropriations if the CR expires and an FY 2011 appropriation has not been enacted by March 18, 2011. Because of this possibility and after review of the excepted personnel for the agency, the Department of Justice (DOJ) has asked for additional information from its Components, regarding the implementation of their respective contingency plans.

Therefore, HRD is requesting each division provide two unclassified narratives justifying those employees designated as "excepted" from a furlough. First, each division must provide a division summary of the functions the employees designated as "excepted" from a furlough perform. Second, each division must provide, *by section*, a detailed description of the specific functions those "excepted" employees perform. If you need to review the employees you designated as "excepted" from a furlough, please click here to access the FBI Furlough Plan SharePoint site: <http://home/teamsites/HRD/GSP/default.aspx>.

Please provide the requested narratives for your division by email to [redacted] by **Close of Business on Tuesday, March 8, 2011**. For additional information, please contact [redacted] at [redacted]. We will keep you advised as information becomes available.

Thank you,

Dave Bennett

DAD, HRD

[REDACTED] (HRD) (FBI)

From: HQ_DIRECTOR_MUELLER
Sent: Friday, April 08, 2011 2:20 PM
To: FBI_ALL_BUREAU_EMPLOYEES
Subject: Message from the Director

Message from the Director

I understand and appreciate the uncertainty and hardship that the potential of the federal government shutdown has placed on you and your families. It is an unfortunate and difficult situation for the FBI. We all share in this frustration, but, most importantly, remain committed to our paramount goal of keeping the American public safe and ensuring that our level of service to this mission continues uninterrupted. We currently face an increasingly complex threat environment, and the American people are counting on us to stay focused on defeating our adversaries.

Congress and the administration are currently working to reach an agreement. However, it does not appear at this moment, that they will be able to resolve the situation by tonight. Employees are expected to come in Monday, April 11, and if necessary, to initiate an orderly shutdown.

I have asked ADD Harrington to provide you with additional, more detailed, information shortly.

Again, thank you for your patience and support through this difficult time.

Robert S. Mueller, III
Director

UNCLASSIFIED
NONRECORD

[REDACTED] (HRD) (FBI)

From: HQ_ASSOCIATE_DEPUTY_DIRECTOR
Sent: Friday, April 08, 2011 3:53 PM
To: FBI_ALL_BUREAU_EMPLOYEES
Subject: Government Shutdown at Midnight 4/8/11

Government Shutdown at Midnight 4/8/11

As you are all well aware, the federal government's funding will expire at midnight tonight and the government will begin a logical shutdown. The President and Congress will continue to work today and through the weekend in an effort to reach an agreement. It is our understanding and interpretation of the guidance provided by the Office of Management and Budget that during a "lapse in appropriations," the FBI may not obligate funds except to maintain the minimum level of emergency activity and to effect an orderly shutdown of government operations. As a result, furloughs will be required for all FBI employees except for those who are performing "excepted" functions as defined by the Office of Management and Budget and Department of Justice. Excepted employees are those who:

- (1) perform emergency work involving the safety of human life or the protection of property;
- (2) are involved in the orderly suspension of agency operations; or
- (3) perform duties which are funded from sources other than the current Continuing Resolution.

Therefore, the FBI has determined that all employees assigned to Field Offices and Legal Attaches will be excepted from a furlough. FBI Headquarters management has completed the process of applying the aforementioned guidance to determine which Headquarters personnel will be excepted from a furlough. Yesterday we began the process of notifying those employees who would be furloughed during a government shutdown. All employees will report to work on Monday 4/11/11 and those being furloughed will complete duties necessary to move a shutdown forward.

On Monday official notices will be issued by division/office management to Headquarters personnel who will be furloughed. Monday's efforts will be centered on performing duties necessary to suspend operations. No new work will be initiated on Monday if we are in a shutdown mode. Those employees who receive a furlough decision notice must immediately sign it and return it to their supervisors. There is a possibility that furloughed employees will not be paid for the time that they are in furlough status. Only employees who are excepted from a furlough are permitted to work during a government shutdown. Excepted employees will not be paid for work performed during a shutdown until an appropriation is enacted. ***For both furloughed and excepted employees, approved paid leave will be cancelled and any new requests for paid leave will be denied during a government shutdown.***

Please note that furloughed employees may be subject to recall by division/office management as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

We know this creates uncertainty and anxiety and we will do our best to minimize this by advising you as information becomes available. Frequently Asked Questions and Answers on how the furlough may affect employee benefits, pay, leave and other important matters are available on the Employee Portal. Employees may also contact the HRD Call Center at (202) 324-3333, 8am to 6pm EST Monday through Friday, or by email at **HQ_DIV03_HRANSWERS**. Once a suspense of the government begins we will have daily meetings at FBIHQ, chaired the Associate Deputy Director, to adjust our workforce based on operational necessity.

It is unfortunate that our organization is caught in this difficult situation, the work we perform is critical to the American public and our level of service to public safety and service must continue uninterrupted. We currently face an increasingly complex threat environment and the American public is counting on us to stay focused on defeating these adversaries. We must be flexible and recognize we are in some uncharted areas and we may not have immediate

answers as we begin to address individual and unique problems created by a shutdown. Additional guidance will be forth coming from HRD and the Finance Division as information becomes available each day. I would ask each of you to be patient and professional in this time of uncertainty. Our control of this situation is limited and we are guided by the Administration and Congress, both of whom indicate publicly a strong desire to resolve this impasse quickly. Discuss any concerns you have with your supervisors and feel free to contact HRD who will make every effort to be responsive to your concerns.

[REDACTED] (HRD) (FBI)

)From: BENNETT, DAVID G. (HRD) (FBI)
Sent: Friday, April 08, 2011 5:23 PM
To: FBI_ADs and EADs
Subject: Unaddressed Furlough Letter

In the event of a furlough due to a lapse in appropriations, HRD is attaching an unaddressed copy of the furlough letter. **This letter must not be distributed to employees until a lapse in appropriations occurs.**

This version of the furlough letter can be used for excepted employees who cannot report for work during the furlough period and whose absence is approved by their Division/Office management.

Division Heads must notify HRD by email at HQ DIV03 SAIU or by contacting [REDACTED] at [REDACTED] [REDACTED] when an employee's status is changed from "excepted" to "furloughed" and provide a justification for the status change.



FurloughLetter_bla
nk.pdf

Thank you,

)Dave Bennett, AD
HRD

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[REDACTED] (HRD) (FBI)

From: BENNETT, DAVID G. (HRD) (FBI)
Sent: Tuesday, April 19, 2011 4:19 PM
To: FBI ADs and EADs; FBI SAC's
Cc: [REDACTED]

Subject: Furlough Wrap-Up and 2011 Hiring

Good Afternoon,

On Friday, April 15, the President signed into law the "Department of Defense and Full-Year Continuing Appropriations Act, 2011" (Public Law 112-10). This prevented a government shutdown and the furloughing of FBI employees. As a result, there is no need to keep the addressed but unsigned official furlough notice letters that HRD sent to you on April 8. Please destroy the unsigned furlough letters.

As HRD prepared for the potential shutdown, many of you and your staff contributed to our plan for an orderly suspension of work. I appreciate those contributions and thank you for your cooperation in that process.

With the government now operational for 2011, HRD's focus has turned to hiring. Funding in the 2011 Appropriations Act allows the FBI to begin external hiring. Congress provided this funding so the FBI could quickly restart our hiring process and fill our vacant positions. To meet the expectations of Congress, the FBI has notified DOJ of the immediate need to lift the temporary hiring freeze.

This week, HRD will begin scheduling EOD dates for those external applicants who were selected for positions and issued Conditional Job Offers before the hiring freeze took effect. I will be providing more details on how HRD will fill the FBI's current vacancies.

I look forward to working with you and your staff as we continue to fulfill our mission.

Dave Bennett
HRD



DIVISION HEAD FURLOUGH CHECKLIST

APRIL 8, 2011

FRIDAY, APRIL 8, 2011 THROUGH MONDAY, APRIL 11, 2011

ALL EMPLOYEES

- ☐ Close out Pay Period 7 by Friday, April 8, 2011

FURLOUGHED EMPLOYEES

- ☐ No WebTA action required for Pay Period 8
- ☐ Distribute furlough notice letters and SF-8
 - o Employees must sign & date the letter as advised by HRD
- ☐ Collect & return signed letters to HRD
- ☐ Advise to monitor public media and/or call HRD Call Center at (202)324-3333 to know when shutdown has ended
- ☐ Add "Out of Office" message to e-mail and voicemail

EXCEPTED EMPLOYEES

- ☐ Disseminate email
 - o Advise to enter Regular Base Pay in WebTA for time worked

DURING FURLOUGH PERIOD

FURLOUGHED EMPLOYEES

- ☐ No WebTA action required
- ☐ Request HRO approval prior to employee recall

EXCEPTED EMPLOYEES

- ☐ Advise to enter Regular Base Pay in WebTA for time worked (all paid leave is cancelled & new requests for paid leave are denied) unless absence is approved (then LWOP – Furlough is to be entered)
- ☐ Distribute furlough notice letter if absence is approved
 - o Employees must sign & date the letter & indicate reason for change in status under his/her signature
 - o Collect letter & return to HRD

POST FURLOUGH PERIOD

FURLOUGHED EMPLOYEES

- ☐ Enter corrected time cards, if applicable

EXCEPTED EMPLOYEES

- ☐ Enter corrected time cards, if applicable

SHUTDOWN AND FURLOUGH: QUESTIONS AND ANSWERS

This document provides all FBI personnel with basic information and guidelines about the possible Federal government-wide shutdown and a related furlough of employees. Since certain information and guidelines may change as decisions on the Federal budget are made, please periodically check for any updates to keep current. Thank you.

<u>General</u>	<u>Requests for Leave During Furlough</u>
<u>Employee Coverage</u>	<u>Leave without Pay (LWOP) in Lieu of Furlough</u>
<u>Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough</u>	<u>Continuation of Pay (COP)</u>
<u>Pay and Deductions from Pay</u>	<u>Payments Upon Separation from Federal Service</u>
<u>Service Credit for Various Purposes</u>	<u>Performance Awards and Within-Grade Increases</u>
<u>Retirement and Insurance Benefits</u>	<u>Documentation of Furlough</u>

General

- Q1. Where do I find information about the status of the federal government shutdown and about when I should return to work while I am in a furlough status?**
- A1.** Contact the HRD Call Center, (202) 324-3333. The recorded message will be updated daily with the status of the shutdown. Employees should call in and listen to public broadcasts to determine if the Federal government is still shut down. Once employees hear that the government shutdown has ended, employees are expected to report to work on their next regular duty day.
- Q2. What is a "furlough"?**
- A2.** A "furlough" is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.
- Q3. What type of furlough is it?**
- A3.** A "shutdown" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not excepted by Office of Management and Budget (OMB) standards. The DOJ, of which the FBI is a component, is operating under a Continuing Resolution that will expire Friday, April 8. At that time, appropriations will lapse until Congress passes another continuing resolution or the FY 2011 appropriation.
- Q4. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30-calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?**
- A4.** No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

OPM's position that this regulation be applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987).

Q5. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A5. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is ***not required*** that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

Employee Coverage

Q6. What is the difference between an "excepted employee" and an "emergency employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

A6. The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations--e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or that require agencies to close all or part of their activities.

Q7. Which employees are "excepted" from a "shutdown" furlough at the FBI?

A7. All employees assigned to Field Offices and Legal Attaché Offices and all employees participating in New Agents Training and the Intelligence Basics Course are excepted from a government furlough. FBI headquarters management is in the process of determining which headquarters personnel will be excepted from a government furlough.

However, depending on the length of time the government is shut down, furloughed employees may be recalled by their division/office management, as necessary, as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Q8. If, during a lapse in appropriations, federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?

A8. *Excepted* employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in a furlough status. Therefore, division management may change the status of employees as additional needs arise. In addition, if an excepted employee is unable to report for work

because of emergency conditions, he or she must be placed in a furlough status until such time as the employee reports for work.

Q9. How do I know that I have been placed in a furlough status?

A9. Your division/office management will provide you a letter, which you must sign and date (in acknowledgement), stating that you have been placed in a nonpay, nonduty (i.e., furlough) status. Your division/office will retain the signed letter.

Q10. How do I know that I am excepted from a furlough?

A10. Your division/office management will notify you (verbally or by email) that you have been excepted from a furlough.

Q11. Are individuals appointed by the President subject to furlough?

A11. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 6301 and attendant regulations governing leave in the federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his/her entire salary is recorded for tax purposes. The following exception must be noted: former career Senior Executive Service (SES) appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Q12. What about persons working for federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A12. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-federal organizations on appointments to the federal government are subject to furlough in the same manner as other employees.
- Personnel on detail to federal agencies from non-federal organizations may continue working, provided that the non-federal organizations pay the total costs of the detail.

- Personnel on detail to federal agencies from non-federal organizations that share part of the costs of detail may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q13. Would employees who are detailed or assigned outside the FBI during part, or the entire period, of furlough be subject to furlough?

A13. Employees on a reimbursable detail from the FBI would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, these employees would be subject to furlough. The FBI may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-federal organizations and who are on leave without pay from their federal positions may continue working during a furlough period.

Q14. How is the number of furlough hours for alternative work schedule (AWS) employees determined during a "shutdown" or "emergency" furlough? Can an employee reschedule a nonworkday that occurred during a furlough?

A14. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations. Since FBI policy dictates that employees' schedules must be established in advance of the administrative work week, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the administrative work week begins.

Q15. If I am an employee who has veterans preference, what are my rights if I have been placed in a furlough status?

A15. Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If an employee has the right of appeal to MSPB and wishes to appeal this action to the MSPB, the employee must file the appeal within 30 calendar days after the effective date of his/her furlough. If the employee wishes to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough

Q16. May employees take other jobs while on furlough?

A16. Even while on furlough, an individual is an employee of the government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes that prohibit certain outside activities. Employees who are furloughed may request outside employment consistent with FBI policy. If interested in seeking outside employment, employees must comply with the procedures for requesting outside employment contained in section 4.8.5. ("FBI Policy on Outside Employment") of the *FBI Ethics and Integrity Program Policy Implementation Guide*.

Q17. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A17. No. Unless otherwise authorized by law, the FBI may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Q18. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A18. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

Q19. Are employees entitled to unemployment compensation while on furlough?

A19. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit their questions to their appropriate state office.

- ❖ Maryland—www.dllr.state.md.us or (800) 827-4839
- ❖ Virginia—www.vec.virginia.gov or (866) 832-2363
- ❖ District of Columbia—www.does.dc.gov or (877) 319-7346
- ❖ West Virginia—www.wv.gov or (304) 558-2624

Pay and Deductions from Pay

- Q20. If a furlough begins during the middle of a pay period due to a lapse of appropriations, will employees receive pay for the portion of the pay period worked prior to the furlough effective date?**
- A20.** Under the current Office of Management and Budget (OMB) guidance, yes, employees will receive pay for the hours worked. The minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to process pay, including processing pay for the portion of the pay period prior to the government shutdown.
- Q21. As a furloughed or excepted employee, will I be paid for work performed during a government shutdown?**
- A21.** Only employees who are excepted from the furlough are permitted to work during a government shutdown. Excepted employees will not be paid for work performed during the shutdown unless an appropriation is enacted. For furloughed employees, there is a possibility that they will not be paid at all for the time that they are in furlough status.
- Q22. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?**
- A22.** The order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions can be found in the National Finance Center (NFC) Bulletin: Title I, 10-6, New Order of Precedence for Calculating Net Pay, dated April 15, 2010. See http://i2i.nfc.usda.gov/Publications/All_Title_1/title 1-10-6.pdf.
- Q23. Can employees obtain a loan from their Thrift Savings Plan (TSP) account while furloughed? What happens if an employee has a TSP loan and is placed in a nonpay status?**
- A23.** According to TSP Fact Sheet 11-5 *Impact of a Federal Government Shutdown on the Thrift Savings Plan*, dated March 4, 2011, employees may be eligible to obtain a loan from their TSP account while furloughed. As to current TSP loans, employees should refer to the same Fact Sheet for more information. This issuance is available from the TSP web site at <http://www.tsp.gov/>.

Service Credit for Various Purposes

- Q24. Is furlough or leave without pay (LWOP) considered a break in service?**
- A24.** No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes. (See Q25.)

Q25. To what extent does nonpay status affect civil service benefits and programs?

A25. Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) is credited as follows:

- For career tenure, the first 30 calendar days of each nonpay period is creditable service.
- For completion of initial probation, an aggregate of 22 workdays in a nonpay status is creditable service.
- For X-118 qualification standards, there is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- For time-in-grade requirements, nonpay status is creditable service.
- For retirement purposes, an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- For health benefits, enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303(e)). The government contribution continues while employees are in a nonpay status. The government also is responsible for advancing from salary the employee share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.
- For life insurance, coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401(c)) or to the agency (5 CFR 870.401(d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- For within-grade increases, an aggregate of 2 workweeks nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406(b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417(b)).
- For annual and sick leave, when a full-time employee accumulates 80 hours of nonpay status, the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period (5 CFR 630.208). For purposes of computing accrual rates for annual leave, creditable service for time in a nonpay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 6303(a) and 8332(f)).

- For severance pay, nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the *computation* of an employee's severance pay fund under 5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service. (This is the same rule used in crediting nonpay status time as "service" in determining annual leave accrual rates.)
- For the Thrift Savings Plan (TSP), employees should refer to the TSP Fact Sheet 11-5 *Impact of a Federal Government Shutdown on the Thrift Savings Plan*, dated March 4, 2011. The Fact Sheet is available from the TSP web site at <http://www.tsp.gov/> from a home or UNet computer.
- For military duty or workers' compensation, nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of federal employment for all purposes upon the employee's return to duty.

Retirement and Insurance Benefits

Q26. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A26. Generally, there will be no effect on the high-3 average unless a furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.

Q27. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A27. Yes.

Q28. What happens if employees cancel Federal Employee Health Benefit (FEHB) coverage while in a nonpay status in order to avoid the expense?

A28. Employees who cancel FEHB coverage to avoid payment of premiums while in a nonpay or reduced-pay status do not have to wait for an FEHB open season to re-enroll. Cancellation of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

Q29. What will happen to employees who would have retired during a shutdown?

A29. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, when the lapse in appropriations ends, the FBI will make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the Human Resources Division, Retirement Unit (RU) (even if put under the main RU door). Any additional required paper work, such

as the formal retirement application form, may be completed when the government reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the FBI.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the Human Resources Division to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee or a right granted by statute or regulation.

Q30. Will my health benefits continue while the government is shut down?

Q30. FEHB enrollment continues for no more than 365 days in a nonpay status. The Government contribution continues while employees are in a nonpay status. The Government also is responsible for advancing from salary the employee's share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

Q31. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A31. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Requests for Leave During Furlough

Q32. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A32. The answer to both questions is yes. All paid leave during the government shutdown is cancelled. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be cancelled and employees must be either (1) at work performing excepted activities or (2) furloughed.

Q33. **May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" furlough? May *excepted* employees be granted new requests for paid leave during a lapse in appropriations?**

A33. No. When an employee is not at work and performing the duties determined by the division/executive management to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

(1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

Q34. **Typically, due to the timing of a "shutdown" furlough and the standard administrative work schedule of most employees, employees are required to report for work on the day on which a "shutdown" furlough begins. How should agencies determine the number of work hours and the number of furlough hours for each furloughed employee?**

A34. OPM recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each furloughed employee works on the day a furlough begins. If an employee is on approved leave on the day the furlough takes effect, both excepted and furloughed employees should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a furloughed employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the furloughed employee had previously been scheduled to take paid leave later

in the day. An agency may subsequently terminate the furlough if the employee's services are required for excepted activities.

Q35. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

A35. An employee who is on approved leave without pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. Consistent with law and regulations, the LWOP taken under the FMLA is part of the 12-week entitlement. However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q32) Since the paid leave was cancelled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

Leave Without Pay (LWOP) in Lieu of Furlough

Q36. May agencies permit employees to use Leave Without Pay (LWOP) in place of furlough?

A36. Yes, in certain situations agencies may permit employees to elect to take LWOP instead of being furloughed. However, agencies may not require employees to request LWOP.

Q37. If an employee is scheduled to take approved leave without pay (LWOP) during a "shutdown" furlough, should the employee continue to be charged LWOP during the period of furlough?

A37. Yes. Furloughed employees scheduled to take preapproved LWOP during a "shutdown" furlough will continue to be charged LWOP during the furlough period, unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

Continuation of Pay (COP)

Q38. If employees are receiving continuation of pay (COP) due to job-related injuries, can the COP be terminated or interrupted by furlough?

A38. No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

Q39. Are employees who are injured while on furlough or leave without pay (LWOP) eligible to receive workers' compensation?

A39. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Payments Upon Separation from Federal Service

Q40. If there is a "shutdown" furlough as a result of a lapse in appropriations, may employees who are separating prior to the expiration of the continuing resolution receive a lump-sum payment for their unused annual leave? Are the funds paid out of the current continuing resolution or the new annual appropriation's monies?

A40. The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. For example, if an employee separates on April 8, 2011, the money to pay the lump-sum annual leave payment is covered under the current continuing resolution.

In the event of a lapse in appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of government operations. This may include the processing of payroll for the pay periods prior to the lapse in appropriations. A minimum number of payroll staff may be excepted from furlough for the minimum time required to process pay, including processing lump-sum annual leave payments paid from funds obligated before a lapse in appropriations.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

Q41. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?

A41. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the federal government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the federal government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as pay for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of agency operations, severance pay covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted. Once an appropriation is in place, the employee will receive the severance pay he or she would have received had the lapse not occurred. (Note: A lapse will not affect severance payments if an appropriation is enacted before the pay date for any severance payment covering the pay period in which the lapse occurred.)

Performance Awards and Within-Grade Increases

Q42. If performance management plans require the payment of performance awards to employees, can the payment be delayed until after a furlough?

A42. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If performance management plans require the payment of performance awards, payment may be delayed until after the furlough when funds are available.

Q43. Can within-grade or step increases for employees be denied or delayed?

A43. Within-grade and step increases for employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a General Schedule employee in step 1, 2, or 3 of the grade who is furloughed for more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406 (b)).

Documentation of Furlough

Q44. How is time on furlough and leave without pay documented?

A44. An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough (or a list form of notification for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is necessary only for return from a consecutive furlough. (See Chapters 15 and 16 of *The Guide to Processing Personnel Actions*.)

For members and former members of the uniformed services who are subject to the "pay

cap" reporting procedures, a copy of the furlough notice, and of the return to duty notice when one is issued, must be sent to the appropriate uniformed service finance center (addresses of the centers are in Chapter 8 of *The Guide to Processing Personnel Actions*), since days in nonpay status will affect the person's retirement pay. When an SF-50 or a list form of the notice is issued to document a furlough, the copy of the notice which is sent to the pay center must have the employee's SSN and DOB and dates of furlough added to it to ensure proper adjustment of his/her retirement pay.

Q45. If I am in furlough status or excepted from a furlough, how do I input my time in WebTA?

A45. Furloughed employees should be entered on the timecard as "LWOP-Furlough". For those designated as "excepted" from a furlough, time should be entered by the employee on the timecard as regular base pay for days worked. Additional WebTA guidance will be forthcoming.



IMPLEMENTATION PROCEDURES FOR A GOVERNMENT SHUTDOWN

APRIL 8, 2011

Instructions to Divisions

Designated Furloughed Employees

Enclosed are the furlough notice letters and copies of the Standard Form (SF) 8 *Unemployment Compensation for Federal Employees (UCFE) Program: Notice to Federal Employee About Unemployment Insurance*. The furlough notice letters are addressed to the employees identified by your Division POC as furloughed and are organized by Division cost code.

- Please distribute (1) a notice letter and (2) an SF 8 to each furloughed employee.
- Employees must fill in, on the front side of the letter, the letter and effective dates of the furlough.
- After each furloughed employee has read the letter, he/she must sign in acknowledgement and date the back side of the letter.
- Each employee may retain a copy of the letter for his/her personal records.
- Once the letters are signed and dated by each furloughed employee, please collect all the letters and return them by Bureau mail to the Human Resources Division (HRD), JEH Building Room 10903.

Please advise employees to set their email and voicemail out-of-office replies before entering furlough status. Supervisors should instruct furloughed employees who to designate as a contact on the out-of-office message. A sample message is:

I am currently out of the office to a government shutdown. If your matter is urgent, please contact Jane Doe at (202) 324-1111.

Once in furlough status, employees are not permitted to work and will be placed in a temporary non-duty, non-pay status. During the furlough period, all previously approved paid leave (i.e., annual, sick, court, administrative, etc.) is cancelled and new requests for paid leave will be denied. If employees wish to file a claim for unemployment insurance, employees are to retain the copy of the SF-8 and take it and the other documentation specified on the SF-8 to their local unemployment insurance office. Employees are to call their local unemployment insurance office for additional information.

If a Division seeks to recall a furloughed employee as a result of newly identified emergency activities, the Division head must obtain prior approval from the Human Resources Officer. Division Heads must submit all such requests with justification to HQ_DIV03_SAIU or contact Courtney Graves at (202) 324-7188. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.



IMPLEMENTATION PROCEDURES FOR A GOVERNMENT SHUTDOWN

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Designated Excepted Employees

Enclosed is an email message Division management may send to those employees who are excepted from the furlough, and thus, will not receive furlough notice letters. Divisions are to send this email message to excepted employees. Employees who are excepted from the furlough are required to report for work, and continue to work, throughout the furlough period.

During the furlough, all paid leave must be cancelled and employees must be either (1) at work performing excepted activities or (2) furloughed. Therefore, all previously approved paid leave (i.e., annual, sick, court, administrative, etc.) is cancelled, and new requests for paid leave must be denied. If an excepted employee is unable to report for work as required, the excepted employee must immediately contact his or her supervisor and/or Division/Office management.

HRD will email all Division POCs an unaddressed copy of the furlough letter. This version of the furlough letter can be used for excepted employees who cannot report for work during the furlough period and whose absence is approved by their supervisor and/or Division/Office management. Division Heads must notify HRD by email at HQ_DIV03_SAIU or by contacting [redacted] at [redacted] when an employee's status is changed from excepted to furloughed and provide a justification for the status change.

If the excepted employee refuses to report for work after being ordered to do so, the excepted employee will be considered absent without leave (AWOL) and may be subject to disciplinary action.



U. S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Washington, D.C. 20535

June 1, 2011

Cost Code/Cost Code Name: SADASDSADSADSADFSADFSADFSADFS

Dear ASFSADFASFASDFASDFASDF

In the absence of either an FY 2011 appropriation, or the extension of the Continuing Resolution, no further financial obligations may be incurred by the FBI, except for those related to the orderly suspension of the FBI's operations, the protection of human life or property, or as otherwise authorized by law. Because your services are no longer needed for the orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective June 1, 2011. If employees are being retained in your office, they are required for orderly suspension of agency operations, they are performing one of the excepted activities defined by FBI guidance, or their functions are funded from sources other than the current Continuing Resolution.

This action is being taken because of a sudden emergency requiring curtailment of the FBI's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d) (2).

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer at the FBI or other federal agencies, but must remain away from your work place unless and until required to return to work. Any paid leave (annual, sick, court, administrative, etc.) requested and/or approved for use during the furlough period is cancelled.

Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. Any other FBI employees do not have MSPB appeal rights. If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

You may request outside employment consistent with FBI policy. If you are interested in seeking outside employment while in a nonpay, nonduty status, you must comply with the procedures for requesting outside employment contained in section 4.8.5. ('FBI Policy on Outside Employment') of the FBI Ethics and Integrity Program Policy Implementation Guide.

(Over)

You may be eligible for unemployment compensation resulting from a government shutdown. You may pick up mail-in forms in local unemployment insurance offices in Maryland, D.C., Virginia or West Virginia and/or obtain information about the claim process at the following websites or by calling the following telephone numbers:

- * Maryland-www.dllr.state.md.us or (800) 827-4839
- * Virginia-www.vec.virginia.gov or (866) 832-2363
- * District of Columbia-www.does.dc.gov or (877) 319-7346
- * West Virginia-www.wv.gov or (304) 558-2624

If you are located outside of these areas, please contact your local unemployment insurance office. If you are paid retroactively for the period during which you were furloughed, you will be required to pay back any unemployment insurance benefits you received.

You are expected to call (202) 324-3333 each morning prior to your regular working hours and listen to public broadcasts to determine if the government is still shut down. When you hear that the government shutdown has ended, you will be expected to return to work on your next regular duty day.

For more information, Frequently Asked Questions (FAQ) about the government shutdown and furlough are available on the Employee Portal. General FAQs about furloughs can also be found on the OPM website at www.opm.gov/furlough.

T. J. Harrington
Associate Deputy Director
FBI

I acknowledge receipt of this decision.

Employee's Signature

Date

Employee's Printed Name

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM

UNEMPLOYMENT INSURANCE (UI) FOR FEDERAL WORKERS

TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM

GENERAL INFORMATION:

1. WHO WILL PAY UNEMPLOYMENT BENEFITS?

If you are eligible, you will be paid by a State employment security agency under the provisions of its unemployment insurance (UI) law. The amount of your regular weekly benefits and the period for which benefits will be paid will generally be determined by the law of the State in which you had your last Official Duty Station. This Duty Station will be printed on your final "Notification of Personnel Action", SF-50. If you have received all the regular benefits for which you are eligible, you may, under certain circumstances, become eligible for additional weeks of extended benefits; check with a State local office official. If your last duty station was outside the United States, you will not be eligible until you return to the United States, including the District of Columbia, Puerto Rico, and Virgin Islands. Your benefit rights will then be determined under the law of your State of residence.

UCFE/UI for unemployed Federal workers is paid from U.S. Government funds. No deductions were taken from your pay to finance these benefits.

2. UNDER WHAT CONDITIONS WILL I BE ELIGIBLE?

All State UI laws require that:

- You must be unemployed, able to work, and available for suitable work; (In some cases, you may be eligible if you are employed less than full time);
- You must register for work and file a claim at a local public employment service/UI claim office;
- You must continue to report to the office as directed; and
- You must have had a certain amount of employment/wages within a base period of 1 year specified in the State law and have been separated through no fault of your own.

All State UI laws will deny you benefits for such reasons as:

- Quitting your job voluntarily without good cause or being discharged for misconduct connected with work; or
- Refusing an offer of a suitable job without good cause.

Some State UI laws deny or reduce UI benefits for certain types of payments you may receive (retirement, severance, and/or lump-sum amount for unused, accrued annual leave).

3. DO I HAVE THE RIGHT OF APPEAL?

Yes. If a determination is made denying you benefits, you have the right to appeal as provided in the applicable State law.

4. ARE THERE ANY PENALTIES?

Yes. If you willfully make a false (fraudulent) claim, you may be fined, imprisoned, or both. If you make a mistake in giving information when you file your claim, notify the local UI claim office as soon as you discover the mistake: prompt notification may avoid a penalty.

(The above statements are issued for general information; they do not have the effect of law, regulation, or ruling).

IF YOU BECOME REEMPLOYED and have been collection UCFE/UI benefit payments, it is your RESPONSIBILITY to notify the local office, in writing, to discontinue paying benefits now that you are employed. Failure to do so may result in a *penalty such as a fine, imprisonment, or both.*

TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM**UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM****NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE**

This form has been given to you because (1) you have been separated from your job, or (2) you were placed in a nonpay status, or (3) your records have been transferred to a different payroll office.

Unemployment insurance (UI) for Federal workers. When unemployed, Federal workers may be entitled to UI benefits similar to those of workers in private industry. If you become unemployed or are in a nonpay status and want to FILE A CLAIM, go to the nearest LOCAL PUBLIC EMPLOYMENT SERVICE OFFICE of the STATE EMPLOYMENT SECURITY AGENCY to register for work and file your claim for UI. Your ELIGIBILITY for UI CANNOT be determined until AFTER you file a claim. DO NOT DELAY filing a UI claim; if you wait, your unemployment benefits may be reduced or you may not qualify for any benefits.

To help EXPEDITE your claim, take THIS FORM with you, your SOCIAL SECURITY ACCOUNT NUMBER CARD, the OFFICIAL NOTICE of your most recent SEPARATION or of your present NONPAY status (Standard Form 50 if available), EARNINGS and LEAVE statements, or similar documents that indicate you were employed by a Federal agency.

FEDERAL AGENCY will insert
in the box:

1st line - Parent Federal Agency

Name and 3 digit code number

2nd line - Major Component (if
any)

3rd and 4th line - complete
address to which all forms
pertaining to a claim should be
sent (ES-931, 931A, 934, 936, and
notices of appeal, hearings, and
determinations)

3 Digit
Identification
FEDERAL AGENCY

CODE NO.

431

Federal Bureau of Investigation
JEH Building, Room 10997
935 Pennsylvania Ave., NW
Washington, DC 20535

To be completed by the Federal
Agency:

Contact Name/Office

HRD

Telephone No. (include area code)

KEEP THIS FORM and **TAKE IT WITH YOU** if you file a UCFE/UI claim for unemployed Federal workers provided by Federal law (U.S. CODE, Title 5, Chapter 85). For more information about UCFE/UI, read the REVERSE SIDE of this form.

To: Excepted Employees

From: Employee's Division Management

Subject: Employees Excepted from the Furlough

In the absence of either an FY 2011 appropriation, or a continuing resolution for the Department of Justice (DOJ), no further financial obligations may be incurred by the FBI, except for those related to the safety of human life or protection of property, the orderly suspension of the FBI's operations, or as otherwise authorized by law. Consequently, the FBI has determined that all employees assigned to Field Offices and Legal Attaches, all employees participating in New Agents Training and Intelligence Basics Course, and specified headquarters personnel as designated by division and executive management are excepted from the furlough.

If you are receiving this email directly from your supervisor or division management, then the purpose of this email is to notify you that you have been designated as an "excepted" employee. As an excepted employee, you are required to report for work during the furlough. **Excepted employees will not be paid for work performed during the government shutdown unless an FY 2011 appropriation is enacted.** You will receive pay for work performed prior to the lapse in appropriations which expires April 8, 2011 but will not receive pay for work performed after April 8, 2011, unless an appropriation is enacted.

During the furlough, all paid leave must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed. Therefore, because you are an excepted employee (i.e., required to work during the furlough) all previously approved paid leave (i.e., annual, sick, court, administrative, etc.) is cancelled. Moreover, any new requests for paid leave during the furlough period will be denied. If you are unable to report for work as required, you must immediately contact your supervisor. Otherwise, if you refuse to report for work after being ordered to do so, you will be considered absent without leave (AWOL) and may be subject to disciplinary action.

Frequently Asked Questions and Answers on how the furlough may affect employee benefits, pay, leave and other important matters are available on the Employee Portal. Employees may also contact the HRD Call Center at (202) 324-3333, 8am-6pm EST Monday through Friday, or by email at **HQ_DIV03_HRANSWERS.**

SHUTDOWN AND FURLOUGH: QUESTIONS AND ANSWERS

This document provides all FBI personnel with basic information and guidelines about the possible Federal government-wide shutdown and a related furlough of employees. Since certain information and guidelines may change as decisions on the Federal budget are made, please periodically check for any updates to keep current. Thank you.

<u>General</u>	<u>Requests for Leave During Furlough</u>
<u>Employee Coverage</u>	<u>Leave without Pay (LWOP) in Lieu of Furlough</u>
<u>Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough</u>	<u>Continuation of Pay (COP)</u>
<u>Pay and Deductions from Pay</u>	<u>Payments Upon Separation from Federal Service</u>
<u>Service Credit for Various Purposes</u>	<u>Performance Awards and Within-Grade Increases</u>
<u>Retirement and Insurance Benefits</u>	<u>Documentation of Furlough</u>

General

Q1. Where do I find information about the status of the federal government shutdown and about when I should return to work while I am in a furlough status?

A1. Contact the HRD Call Center, (202) 324-3333. The recorded message will be updated daily with the status of the shutdown. Employees should call in and listen to public broadcasts to determine if the Federal government is still shut down. Once employees hear that the government shutdown has ended, employees are expected to report to work on their next regular duty day.

Q2. What is a "furlough"?

A2. A "furlough" is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

Q3. What type of furlough is the Bureau operating under at this time?

A3. A "shutdown" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not excepted by Office of Management and Budget (OMB) standards. The DOJ, of which the FBI is a component, is operating under a Continuing Resolution that will expire Friday, March 18. At that time, appropriations will lapse until Congress passes another continuing resolution or the FY 2011 appropriation.

Q4. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30-calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A4. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

OPM's position that this regulation be applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987).

Q5. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A5. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is ***not required*** that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

Employee Coverage

Q6. What is the difference between an "excepted employee" and an "emergency employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

A6. The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations--e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or that require agencies to close all or part of their activities.

Q7. Which employees are "excepted" from the furlough at the FBI?

A7. All employees assigned to Field Offices and Legal Attaché Offices and all employees participating in New Agents Training and the Intelligence Basics Course are excepted from a government furlough. FBI headquarters management is in the process of determining which headquarters personnel will be excepted from a government furlough.

However, depending on the length of time the government is shut down, furloughed employees may be recalled by their division/office management, as necessary, as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Q8. If, during a lapse in appropriations, federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?

A8. *Excepted* employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in a furlough status. Therefore, division management may change the status of employees as additional needs arise. In addition, if an excepted employee is unable to report for work

because of emergency conditions, he or she must be placed in a furlough status until such time as the employee reports for work.

Q9. How do I know that I have been placed in furlough status?

A9. Your division/office management will provide you a letter, which you must sign and date (in acknowledgement), stating that you have been placed in a nonpay, nonduty (i.e., furlough) status. Your division/office will retain the signed letter.

Q10. How do I know that I am excepted from the furlough?

A10. Your division/office management will notify you (verbally or by email) that you have been excepted from the furlough.

Q11. Are individuals appointed by the President subject to furlough?

A11. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 6301 and attendant regulations governing leave in the federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his/her entire salary is recorded for tax purposes. The following exception must be noted: former career Senior Executive Service (SES) appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Q12. What about persons working for federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A12. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-federal organizations on appointments to the federal government are subject to furlough in the same manner as other employees.
- Personnel on detail to federal agencies from non-federal organizations may continue working, provided that the non-federal organizations pay the total costs of the detail.

- Personnel on detail to federal agencies from non-federal organizations that share part of the costs of detail may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q13. Would employees who are detailed or assigned outside the FBI during part, or the entire period, of furlough be subject to furlough?

A13. Employees on a reimbursable detail from the FBI would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, these employees would be subject to furlough. The FBI may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-federal organizations and who are on leave without pay from their federal positions may continue working during a furlough period.

Q14. How is the number of furlough hours for alternative work schedule (AWS) employees determined during a "shutdown" or "emergency" furlough? Can an employee reschedule a nonworkday that occurred during the furlough?

A14. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations. Since FBI policy dictates that employees' schedules must be established in advance of the administrative work week, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the pay period begins.

Q15. If I am an employee who has veterans preference, what are my rights if I have been placed in a furlough status?

A15. Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If an employee has the right of appeal to MSPB and wishes to appeal this action to the MSPB, the employee must file the appeal within 30 calendar days after the effective date of his/her furlough. If the employee wishes to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough

Q16. May employees take other jobs while on furlough?

A16. Even while on furlough, an individual is an employee of the government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes that prohibit certain outside activities. Employees who are furloughed may request outside employment consistent with FBI policy. If interested in seeking outside employment, employees must comply with the procedures for requesting outside employment contained in section 4.8.5. ("FBI Policy on Outside Employment") of the *FBI Ethics and Integrity Program Policy Implementation Guide*.

Q17. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A17. No. Unless otherwise authorized by law, the FBI may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Q18. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A18. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

Q19. Are employees entitled to unemployment compensation while on furlough?

A19. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit their questions to their appropriate state office.

- ❖ Maryland—www.dllr.state.md.us or (800) 827-4839
- ❖ Virginia—www.vec.virginia.gov or (866) 832-2363
- ❖ District of Columbia—www.does.dc.gov or (877) 319-7346
- ❖ West Virginia—www.wv.gov or (304) 558-2624

Pay and Deductions from Pay

- Q20. If a furlough begins during the middle of a pay period due to a lapse of appropriations, will employees receive pay for the portion of the pay period worked prior to the furlough effective date?**
- A20.** Under the current Office of Management and Budget (OMB) guidance, yes, employees will receive pay for the hours worked. The minimum number of payroll staff necessary for this process will be exempt from furlough for the minimum time required to process pay, including processing pay for the portion of the pay period prior to the government shutdown.
- Q21. As a furloughed or excepted employee, will I be paid for work performed during a government shutdown?**
- A21.** Only employees who are excepted from the furlough are permitted to work during a government shutdown. Excepted employees will not be paid for work performed during the shutdown unless an appropriation is enacted. For furloughed employees, there is a possibility that they will not be paid at all for the time that they are in furlough status.
- Q22. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?**
- A22.** The order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions can be found in the National Finance Center (NFC) Bulletin: Title I, 10-6, New Order of Precedence for Calculating Net Pay, dated April 15, 2010. See http://i2i.nfc.usda.gov/Publications/All_Title_1/title 1-10-6.pdf.
- Q23. Can employees obtain a loan from their Thrift Savings Plan (TSP) account while in a nonpay status? What happens if an employee has a TSP loan and is placed in a nonpay status?**
- A23.** Employees may not obtain a loan from their TSP account while in a nonpay status. As to current TSP loans, employees should refer to the TSP Fact Sheet - *Effect of Nonpay Status on TSP Participation*. This issuance is available from the TSP web site at <http://www.tsp.gov/>.

Service Credit for Various Purposes

- Q24. Is furlough or leave without pay (LWOP) considered a break in service?**
- A24.** No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes. (See Q25.)

Q25. To what extent does nonpay status affect civil service benefits and programs?

A25. Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) is credited as follows:

- For career tenure, the first 30 calendar days of each nonpay period is creditable service.
- For completion of initial probation, an aggregate of 22 workdays in a nonpay status is creditable service.
- For X-118 qualification standards, there is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- For time-in-grade requirements, nonpay status is creditable service.
- For retirement purposes, an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- For health benefits, enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303(e)). The government contribution continues while employees are in a nonpay status. The government also is responsible for advancing from salary the employee share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.
- For life insurance, coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401(c)) or to the agency (5 CFR 870.401(d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- For within-grade increases, an aggregate of 2 workweeks nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406(b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417(b)).
- For annual and sick leave, when a full-time employee accumulates 80 hours of nonpay status, the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period (5 CFR 630.208). For purposes of computing accrual rates for annual leave, creditable service for time in a nonpay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 6303(a) and 8332(f)).

- For severance pay, nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the *computation* of an employee's severance pay fund under 5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service. (This is the same rule used in crediting nonpay status time as "service" in determining annual leave accrual rates.)
- For the Thrift Savings Plan (TSP), agencies should refer to the *Thrift Savings Plan Bulletin for Agency TSP Representatives*, No. 97-43, dated December 18, 1997. For additional information, agency representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1460. Employees should refer to the TSP Fact Sheet - *Effect of Nonpay Status on TSP Participation*. Both issuances are available from the TSP web site at <http://www.tsp.gov/> from a home or UNet computer.
- For military duty or workers' compensation, nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of federal employment for all purposes upon the employee's return to duty.

Retirement and Insurance Benefits

Q26. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A26. Generally, there will be no effect on the high-3 average unless the furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.

Q27. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A27. Yes.

Q28. What happens if employees cancel Federal Employee Health Benefit (FEHB) coverage while in a nonpay status in order to avoid the expense?

A28. Employees who cancel FEHB coverage to avoid payment of premiums while in a nonpay or reduced-pay status do not have to wait for an FEHB open season to re-enroll. Cancellation of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

Q29. What will happen to employees who would have retired during the shutdown?

A29. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, when the lapse in appropriations ends, the FBI will make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or

personally submitted to the Human Resources Division, Retirement Unit (RU) (even if put under the main RU door). Any additional required paper work, such as the formal retirement application form, may be completed when the government reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the FBI.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the Human Resources Division to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee or a right granted by statute or regulation.

Q30. Will my health benefits continue while the government is shut down?

Q30. FEHB enrollment continues for no more than 365 days in a nonpay status. The Government contribution continues while employees are in a nonpay status. The Government also is responsible for advancing from salary the employee's share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

Q31. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A31. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Requests for Leave During Furlough

Q32. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the

proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A32. The answer to both questions is yes. All paid leave during the government shutdown is cancelled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

Q33. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" furlough? May *excepted* employees be granted new requests for paid leave during a lapse in appropriations?

A33. No. When an employee is not at work and performing the duties determined by the division/executive management to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

(1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

Q34. Typically, due to the timing of a "shutdown" furlough and the standard administrative work schedule of most employees, employees are required to report for work on the day on which a "shutdown" furlough begins. How should agencies determine the number of work hours and the number of furlough hours for each nonexcepted employee?

A34. OPM recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each furloughed employee works on the day a furlough begins. If an employee is on approved leave on the day the furlough takes effect, both excepted and furloughed employees should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a

furloughed employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the furloughed employee had previously been scheduled to take paid leave later in the day. An agency may subsequently terminate the furlough if the employee's services are required for excepted activities.

Q35. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

A35. An employee who is on approved leave without pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. Consistent with law and regulations, the LWOP taken under the FMLA is part of the 12-week entitlement. However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q32) Since the paid leave was canceled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

Leave Without Pay (LWOP) in Lieu of Furlough

Q36. May agencies permit employees to use Leave Without Pay (LWOP) in place of furlough?

A36. Yes, in certain situations agencies may permit employees to elect to take LWOP instead of being furloughed. However, agencies may not require employees to request LWOP.

Q37. If an employee is scheduled to take approved leave without pay (LWOP) during a "shutdown" furlough, should the employee continue to be charged LWOP during the period of furlough?

A37. Yes. Furloughed employees scheduled to take preapproved LWOP during a "shutdown" furlough will continue to be charged LWOP during the furlough period, unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

Continuation of Pay (COP)

- Q38. If employees are receiving continuation of pay (COP) due to job-related injuries, can the COP be terminated or interrupted by furlough?**
- A38.** No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.
- Q39. Are employees who are injured while on furlough or leave without pay (LWOP) eligible to receive workers compensation?**
- A39.** No. Workers compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Payments Upon Separation from Federal Service

- Q40. If there is a "shutdown" furlough as a result of a lapse in appropriations, may employees who are separating prior to the expiration of the continuing resolution receive a lump-sum payment for their unused annual leave? Are the funds paid out of the current continuing resolution or the new annual appropriation's monies?**

- A40.** The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. For example, if an employee separates on March 4, 2011, the money to pay the lump-sum annual leave payment is covered under the current continuing resolution.

In the event of a lapse in appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of government operations. This may include the processing of payroll for the pay periods prior to the lapse in appropriations. A minimum number of payroll staff may be excepted from furlough for the minimum time required to process pay, including processing lump-sum annual leave payments paid from funds obligated before the lapse in appropriations.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

- Q41. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?**
- A41.** Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the government of the United States. (Severance pay is suspended or terminated when the individual is

reemployed by the federal government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the federal government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as payroll checks for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of agency operations, severance pay checks covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted. Once an appropriation is in place, the employee will receive the severance pay he would have received had the lapse not occurred. (Note: A lapse will not affect severance payments if an appropriation is enacted before the pay date for any severance payment covering the pay period in which the lapse occurred.)

Performance Awards and Within-Grade Increases

Q42. If performance management plans require the payment of performance awards to employees, can the payment be delayed until after the furlough?

A42. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If performance management plans require the payment of performance awards, payment may be delayed until after the furlough when funds are available.

Q43. Can within-grade or step increases for employees be denied or delayed?

A43. Within-grade and step increases for employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a General Schedule employee in step 1, 2, or 3 of the grade who is furloughed for more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406 (b)).

Documentation of Furlough

Q44. How is time on furlough and leave without pay documented?

- A44.** An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough (or a list form of notification for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is necessary only for return from a consecutive furlough. (See Chapters 15 and 16 of *The Guide to Processing Personnel Actions*.)

For members and former members of the uniformed services who are subject to the "pay cap" reporting procedures, a copy of the furlough notice, and of the return to duty notice when one is issued, must be sent to the appropriate uniformed service finance center (addresses of the centers are in Chapter 8 of *The Guide to Processing Personnel Actions*), since days in nonpay status will affect the person's retirement pay. When an SF-50 or a list form of the notice is issued to document a furlough, the copy of the notice which is sent to the pay center must have the employee's SSN and DOB and dates of furlough added to it to ensure proper adjustment of his/her retirement pay.

Q45. If I am in furlough status or excepted from the furlough, how do I input my time in WebTA?

- A45.** Furloughed employees should be entered on the timecard as "LWOP-Furlough". For those designated as "Excepted" from the furlough, time should be entered by the employee on the timecard as regular base pay for days worked. Additional WebTA guidance will be forthcoming.

SHUTDOWN AND FURLOUGH: QUESTIONS AND ANSWERS

This document provides FBI personnel with basic information and guidelines about the possible Federal government-wide shutdown and a related furlough of employees. Since certain information and guidelines may change as decisions on the Federal budget are made, please periodically check for any updates to keep current. Thank you.

<u>General</u>	<u>Requests for Leave During Furlough</u>
<u>Employee Coverage</u>	<u>Leave without Pay (LWOP) in Lieu of Furlough</u>
<u>Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough</u>	<u>Continuation of Pay (COP)</u>
<u>Pay and Deductions from Pay</u>	<u>Payments Upon Separation from Federal Service</u>
<u>Service Credit for Various Purposes</u>	<u>Performance Awards and Within-Grade Increases</u>
<u>Retirement and Insurance Benefits</u>	<u>Documentation of Furlough</u>

General

Q1. Where do I find information about the status of the federal government shutdown and about when I should return to work while I am in a furlough status?

A1. Contact the HRD Call Center, (202) 324-3333. A recorded message will be updated daily with the status of the shutdown. Employees should also listen to public broadcasts to determine if the federal government is still shut down. Once employees hear that the government shutdown has ended, employees are expected to report to work on their next regular duty day.

Q2. What is a "furlough"?

A2. A "furlough" is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

Q3. What type of furlough is it?

A3. A "shutdown" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not excepted by Office of Management and Budget (OMB) standards. The DOJ, of which the FBI is a component, is operating under a Continuing Resolution that will expire Friday, April 8. At that time, appropriations will lapse until Congress passes another continuing resolution or the FY 2011 appropriation.

Q4. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30 calendar days' advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A4. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

OPM's position that this regulation be applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987).

Q5. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A5. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is *not required* that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

Employee Coverage

Q6. What is the difference between an "excepted employee" and an "emergency employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

A6. The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations--e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or that require agencies to close all or part of their activities.

Q7. Which employees are "excepted" from a "shutdown" furlough at the FBI?

A7. All employees assigned to Field Offices and Legal Attaché Offices and all employees participating in New Agents Training and the Intelligence Basics Course are excepted from a shutdown furlough. FBI headquarters management is in the process of determining which headquarters employees will be excepted from a government furlough.

However, depending on the length of time the government is shut down, furloughed employees may be recalled by their division/office management, as necessary, as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Q8. If, during a lapse in appropriations, federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?

A8. *Excepted* employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in a furlough status. Therefore, division management may change the status of employees as

additional needs arise. In addition, if an excepted employee is unable to report for work because of emergency conditions, he or she must be placed in a furlough status until such time as the employee reports for work.

Q9. How do I know that I have been placed in a furlough status?

A9. Your division/office management will notify you and you will be provided with a letter, which you must sign and date (in acknowledgement), stating that you have been placed in a nonpay, nonduty (i.e., furlough) status. HRD will retain the signed letter, although you may have a copy of it.

Q10. How do I know if I am excepted from a furlough?

A10. Your division/office management will notify you (verbally or by email) that you have been excepted from a furlough.

Q11. Are individuals appointed by the President subject to furlough?

A11. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 6301 and attendant regulations governing leave in the federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his/her entire salary is recorded for tax purposes. The following exception must be noted: former career Senior Executive Service (SES) appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Q12. What about persons working for federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A12. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-federal organizations on appointments to the federal government are subject to furlough in the same manner as other employees.

- Personnel on detail to federal agencies from non-federal organizations may continue working, provided that the non-federal organizations pay the total costs of the detail.
- Personnel on detail to federal agencies from non-federal organizations that share part of the costs of detail may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q13. Would employees who are detailed or assigned outside the FBI during part, or the entire period, of furlough be subject to furlough?

A13. Employees on a reimbursable detail from the FBI would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, these employees would be subject to furlough. The FBI may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-federal organizations and who are on leave without pay from their federal positions may continue working during a furlough period.

Q14. How is the number of furlough hours for alternative work schedule (AWS) employees determined during a "shutdown" or "emergency" furlough? Can an employee reschedule a nonworkday that occurred during a furlough?

A14. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations. Since FBI policy dictates that employees' schedules must be established in advance of the administrative work week, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the administrative work week begins.

Q15. If I am an employee who has veterans preference, what are my rights if I have been placed in a furlough status?

A15. Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If an employee has the right of appeal to MSPB and wishes to appeal this action to the MSPB, the employee must file the appeal within 30 calendar days after the

effective date of his/her furlough. If the employee wishes to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough

Q16. May employees take other jobs while on furlough?

A16. Even while on furlough, an individual is an employee of the government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes that prohibit certain outside activities. Employees who are furloughed may request outside employment consistent with FBI policy. If interested in seeking outside employment, employees must comply with the procedures for requesting outside employment contained in section 4.8.5. ("FBI Policy on Outside Employment") of the *FBI Ethics and Integrity Program Policy Implementation Guide*.

Q17. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A17. No. Unless otherwise authorized by law, the FBI may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Q18. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A18. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

Q19. Are employees entitled to unemployment compensation while on furlough?

A19. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit their questions to their appropriate state office where their work duty station is located.

- ❖ Maryland—www.dllr.state.md.us or (800) 827-4839
- ❖ Virginia—www.vec.virginia.gov or (866) 832-2363
- ❖ District of Columbia—www.does.dc.gov or (877) 319-7346
- ❖ West Virginia—www.wv.gov or (304) 558-2624

Pay and Deductions from Pay

- Q20. If a furlough begins during the middle of a pay period due to a lapse of appropriations, will employees receive pay for the portion of the pay period worked prior to the furlough effective date?**
- A20.** Under the current Office of Management and Budget (OMB) guidance, yes, employees will receive pay for the hours worked. The minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to process pay, including processing pay for the portion of the pay period prior to the government shutdown.
- Q21. As a furloughed or excepted employee, will I be paid for work performed during a government shutdown?**
- A21.** Only employees who are excepted from the furlough are permitted to work during a government shutdown. Excepted employees will not be paid for work performed during the shutdown unless an appropriation is enacted. For furloughed employees, there is a possibility that they will not be paid at all for the time that they are in furlough status.
- Q22. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?**
- A22.** The order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions can be found at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477>.
- Q23. Can employees obtain a loan from their Thrift Savings Plan (TSP) account while furloughed? What happens if an employee has a TSP loan and is placed in a nonpay status?**
- A23.** According to TSP Fact Sheet 11-5 *Impact of a Federal Government Shutdown on the Thrift Savings Plan*, dated March 4, 2011, employees may be eligible to obtain a loan from their TSP account while furloughed. As to current TSP loans, employees should refer to the same Fact Sheet for more information. This issuance is available from the TSP web site at <http://www.tsp.gov/>.

Service Credit for Various Purposes

- Q24. Is furlough or leave without pay (LWOP) considered a break in service?**
- A24.** No, both situations mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes. (See Q25.)

Q25. To what extent does nonpay status affect civil service benefits and programs?

A25. Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" as http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

Retirement and Insurance Benefits

Q26. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A26. Generally, there will be no effect on the high-3 average unless a furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.

Q27. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A27. Yes.

Q28. What happens if employees cancel Federal Employee Health Benefit (FEHB) coverage while in a nonpay status in order to avoid the expense?

A28. Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share the FEHB premium will accumulate and be withheld from pay upon return to pay status.

Q29. What will happen to employees who would have retired during a shutdown?

A29. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, when the lapse in appropriations ends, the FBI will make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the Human Resources Division, Retirement Unit (RU) (even if put under the main RU door). Any additional required paper work, such as the formal retirement application form, may be completed when the government reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the FBI.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting

retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the Human Resources Division to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee or a right granted by statute or regulation.

Q30. Will my health benefits continue while the government is shut down?

Q30. FEHB enrollment continues for no more than 365 days in a nonpay status. The Government contribution continues while employees are in a nonpay status. The Government also is responsible for advancing from salary the employee's share as well. The employees' premiums will accumulate and will be withheld from his or her pay upon returning to duty.

Q31. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A31. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Requests for Leave During Furlough

Q32. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A32. The answer to both questions is yes. All paid leave during the government shutdown is cancelled. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be cancelled and employees must be either (1) at work performing excepted activities or (2) furloughed.

Q33. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" furlough? May *excepted* employees be granted new requests for paid leave during a lapse in appropriations?

A33. No. When an employee is not at work and performing the duties determined by the division/executive management to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

(1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

Q34. Typically, due to the timing of a "shutdown" furlough and the standard administrative work schedule of most employees, employees are required to report for work on the day on which a "shutdown" furlough begins. How should agencies determine the number of work hours and the number of furlough hours for each furloughed employee?

A34. OPM recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each furloughed employee works on the day a furlough begins. If an employee is on approved leave on the day the furlough takes effect, both excepted and furloughed employees should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a furloughed employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the furloughed employee had previously been scheduled to take paid leave later in the day. An agency may subsequently terminate the furlough if the employee's services are required for excepted activities.

Q35. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

A35. An employee who is on approved leave without pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. An employee on LWOP under FMLA during a shutdown furlough may not later substitute paid time off for the days of LWOP. The LWOP taken under the FMLA is not part of the 12-week entitlement.

However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q32) Since the paid leave was cancelled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

Leave Without Pay (LWOP) in Lieu of Furlough

Q36. May agencies permit employees to use Leave Without Pay (LWOP) in place of furlough?

A36. Yes, in certain situations agencies may permit employees to elect to take LWOP instead of being furloughed. However, agencies may not require employees to request LWOP.

Q37. If an employee is scheduled to take approved leave without pay (LWOP) during a "shutdown" furlough, should the employee continue to be charged LWOP during the period of furlough?

A37. Yes. Furloughed employees scheduled to take preapproved LWOP during a "shutdown" furlough will continue to be charged LWOP during the furlough period, unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

Continuation of Pay (COP)

Q38. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a Government shutdown?

A38. The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Employees' Compensation Act (FECA) advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay salary during the shutdown but the agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown

period, the employee should receive COP for any period of disability that occurs within the shutdown. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

Q39. Are employees who are injured while on furlough or leave without pay (LWOP) eligible to receive workers' compensation?

A39. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Payments Upon Separation from Federal Service

Q40. If there is a "shutdown" furlough as a result of a lapse in appropriations, may employees who are separating prior to the expiration of the continuing resolution receive a lump-sum payment for their unused annual leave? Are the funds paid out of the current continuing resolution or the new annual appropriation's monies?

A40. The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. For example, if an employee separates on April 8, 2011, the money to pay the lump-sum annual leave payment is covered under the current continuing resolution.

In the event of a lapse in appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of government operations. This may include the processing of payroll for the pay periods prior to the lapse in appropriations. A minimum number of payroll staff may be excepted from furlough for the minimum time required to process pay, including processing lump-sum annual leave payments paid from funds obligated before a lapse in appropriations.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

Q41. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?

A41. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the federal government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued

continuing entitlement to severance pay. If the recipient is reemployed by the federal government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as pay for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of agency operations, severance pay covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

Additional information on severance pay can be found at www.opm.gov.

Performance Awards and Within-Grade Increases

Q42. If performance management plans require the payment of performance awards to employees, can the payment be delayed until after a furlough?

A42. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If performance management plans require the payment of performance awards, payment may be delayed until after the furlough when funds are available.

Q43. Can within-grade or step increases for employees be denied or delayed?

A43. Within-grade and step increases for General Schedule (GS) and wage employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in step 1, 2, or 3 of the grade who is furloughed for more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406 (b)).

Documentation of Furlough

Q44. If I am in furlough status or excepted from a furlough, how do I input my time in WebTA?

A44. Furloughed employees should be entered on the timecard as "LWOP-Furlough." For those designated as "excepted" from a furlough, time should be entered by the employee

on the timecard as regular base pay for days worked. Additional WebTA guidance will be forthcoming.

SHUTDOWN AND FURLOUGH: QUESTIONS AND ANSWERS

This document provides FBI personnel with basic information and guidelines about the possible Federal government-wide shutdown and a related furlough of employees. Since certain information and guidelines may change as decisions on the Federal budget are made, please periodically check for any updates to keep current. Thank you.

<u>General</u>	<u>Requests for Leave During Furlough</u>
<u>Employee Coverage</u>	<u>Leave without Pay (LWOP) in Lieu of Furlough</u>
<u>Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough</u>	<u>Continuation of Pay (COP)</u>
<u>Pay and Deductions from Pay</u>	<u>Payments Upon Separation from Federal Service</u>
<u>Service Credit for Various Purposes</u>	<u>Performance Awards and Within-Grade Increases</u>
<u>Retirement and Insurance Benefits</u>	<u>Documentation of Furlough</u>

General

Q1. Where do I find information about the status of the federal government shutdown and about when I should return to work while I am in a furlough status?

A1. Contact the HRD Call Center, (202) 324-3333. A recorded message will be updated daily with the status of the shutdown. Employees should also listen to public broadcasts to determine if the federal government is still shut down. Once employees hear that the government shutdown has ended, employees are expected to report to work on their next regular duty day.

Q2. What is a "furlough"?

A2. A "furlough" is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

Q3. What type of furlough is it?

A3. A "shutdown" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not excepted by Office of Management and Budget (OMB) standards. The DOJ, of which the FBI is a component, is operating under a Continuing Resolution that will expire Friday, April 15. At that time, appropriations will lapse until Congress passes another continuing resolution or the FY 2011 appropriation.

Q4. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30 calendar days' advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A4. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

OPM's position that this regulation be applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987).

Q5. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A5. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is *not required* that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

Employee Coverage

Q6. What is the difference between an "excepted employee" and an "emergency employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

A6. The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations--e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or that require agencies to close all or part of their activities.

Q7. Which employees are "excepted" from a "shutdown" furlough at the FBI?

A7. All employees assigned to Field Offices and Legal Attaché Offices and all employees participating in New Agents Training and the Intelligence Basics Course are excepted from a shutdown furlough. FBI headquarters management is in the process of determining which headquarters employees will be excepted from a government furlough.

However, depending on the length of time the government is shut down, furloughed employees may be recalled by their division/office management, as necessary, as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Q8. If, during a lapse in appropriations, federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?

A8. *Excepted* employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in a furlough status. Therefore, division management may change the status of employees as

additional needs arise. In addition, if an excepted employee is unable to report for work because of emergency conditions, he or she must be placed in a furlough status until such time as the employee reports for work.

Q9. How do I know that I have been placed in a furlough status?

A9. Your division/office management will notify you and you will be provided with a letter, which you must sign and date (in acknowledgement), stating that you have been placed in a nonpay, nonduty (i.e., furlough) status. HRD will retain the signed letter, although you may have a copy of it.

Q10. How do I know if I am excepted from a furlough?

A10. Your division/office management will notify you (verbally or by email) that you have been excepted from a furlough.

Q11. Are individuals appointed by the President subject to furlough?

A11. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 6301 and attendant regulations governing leave in the federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his/her entire salary is recorded for tax purposes. The following exception must be noted: former career Senior Executive Service (SES) appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Q12. What about persons working for federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A12. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-federal organizations on appointments to the federal government are subject to furlough in the same manner as other employees.

- Personnel on detail to federal agencies from non-federal organizations may continue working, provided that the non-federal organizations pay the total costs of the detail.
- Personnel on detail to federal agencies from non-federal organizations that share part of the costs of detail may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q13. Would employees who are detailed or assigned outside the FBI during part, or the entire period, of furlough be subject to furlough?

A13. Employees on a reimbursable detail from the FBI would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, these employees would be subject to furlough. The FBI may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-federal organizations and who are on leave without pay from their federal positions may continue working during a furlough period.

Q14. How is the number of furlough hours for alternative work schedule (AWS) employees determined during a "shutdown" or "emergency" furlough? Can an employee reschedule a nonworkday that occurred during a furlough?

A14. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations. Since FBI policy dictates that employees' schedules must be established in advance of the administrative work week, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the administrative work week begins.

Q15. If I am an employee who has veterans preference, what are my rights if I have been placed in a furlough status?

A15. Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If an employee has the right of appeal to MSPB and wishes to appeal this action to the MSPB, the employee must file the appeal within 30 calendar days after the

effective date of his/her furlough. If the employee wishes to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough

Q16. May employees take other jobs while on furlough?

A16. Even while on furlough, an individual is an employee of the government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes that prohibit certain outside activities. Employees who are furloughed may request outside employment consistent with FBI policy. If interested in seeking outside employment, employees must comply with the procedures for requesting outside employment contained in section 4.8.5. ("FBI Policy on Outside Employment") of the *FBI Ethics and Integrity Program Policy Implementation Guide*.

Q17. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A17. No. Unless otherwise authorized by law, the FBI may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Q18. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A18. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

Q19. Are employees entitled to unemployment compensation while on furlough?

A19. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit their questions to their appropriate state office where their work duty station is located.

- ❖ Maryland—www.dllr.state.md.us or (800) 827-4839
- ❖ Virginia—www.vec.virginia.gov or (866) 832-2363
- ❖ District of Columbia—www.does.dc.gov or (877) 319-7346
- ❖ West Virginia—www.wv.gov or (304) 558-2624

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- Q20. If a furlough begins during the middle of a pay period due to a lapse of appropriations, will employees receive pay for the portion of the pay period worked prior to the furlough effective date?**
- A20.** Under the current Office of Management and Budget (OMB) guidance, yes, employees will receive pay for the hours worked. The minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to process pay, including processing pay for the portion of the pay period prior to the government shutdown.
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- A23.** According to TSP Fact Sheet 11-5 *Impact of a Federal Government Shutdown on the Thrift Savings Plan*, dated March 4, 2011, employees may be eligible to obtain a loan from their TSP account while furloughed. As to current TSP loans, employees should refer to the same Fact Sheet for more information. This issuance is available from the TSP web site at <http://www.tsp.gov/>.

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Retirement and Insurance Benefits

Q26. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A26. Generally, there will be no effect on the high-3 average unless a furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.

Q27. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A27. Yes.

Q28. What happens if employees cancel Federal Employee Health Benefit (FEHB) coverage while in a nonpay status in order to avoid the expense?

A28. Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share the FEHB premium will accumulate and be withheld from pay upon return to pay status.

Q29. What will happen to employees who would have retired during a shutdown?

A29. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, when the lapse in appropriations ends, the FBI will make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the Human Resources Division, Retirement Unit (RU) (even if put under the main RU door). Any additional required paper work, such as the formal retirement application form, may be completed when the government reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the FBI.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting

retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the Human Resources Division to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee or a right granted by statute or regulation.

Q30. Will my health benefits continue while the government is shut down?

Q30. FEHB enrollment continues for no more than 365 days in a nonpay status. The Government contribution continues while employees are in a nonpay status. The Government also is responsible for advancing from salary the employee's share as well. The employees' premiums will accumulate and will be withheld from his or her pay upon returning to duty.

Q31. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A31: Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Requests for Leave During Furlough

Q32. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A32. The answer to both questions is yes. All paid leave during the government shutdown is cancelled. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be cancelled and employees must be either (1) at work performing excepted activities or (2) furloughed.

Q33. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" furlough? May *excepted* employees be granted new requests for paid leave during a lapse in appropriations?

A33. No. When an employee is not at work and performing the duties determined by the division/executive management to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

(1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

Q34. Typically, due to the timing of a "shutdown" furlough and the standard administrative work schedule of most employees, employees are required to report for work on the day on which a "shutdown" furlough begins. How should agencies determine the number of work hours and the number of furlough hours for each furloughed employee?

A34. OPM recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each furloughed employee works on the day a furlough begins. If an employee is on approved leave on the day the furlough takes effect, both excepted and furloughed employees should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a furloughed employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the furloughed employee had previously been scheduled to take paid leave later in the day. An agency may subsequently terminate the furlough if the employee's services are required for excepted activities.

Q35. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

A35. An employee who is on approved leave without pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. An employee on LWOP under FMLA during a shutdown furlough may not later substitute paid time off for the days of LWOP. The LWOP taken under the FMLA is not part of the 12-week entitlement.

However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q32) Since the paid leave was cancelled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

Leave Without Pay (LWOP) in Lieu of Furlough

Q36. May agencies permit employees to use Leave Without Pay (LWOP) in place of furlough?

A36. Yes, in certain situations agencies may permit employees to elect to take LWOP instead of being furloughed. However, agencies may not require employees to request LWOP.

Q37. If an employee is scheduled to take approved leave without pay (LWOP) during a "shutdown" furlough, should the employee continue to be charged LWOP during the period of furlough?

A37. Yes. Furloughed employees scheduled to take preapproved LWOP during a "shutdown" furlough will continue to be charged LWOP during the furlough period, unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

Continuation of Pay (COP)

Q38. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a Government shutdown?

A38. The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Employees' Compensation Act (FECA) advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay salary during the shutdown but the agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown

period, the employee should receive COP for any period of disability that occurs within the shutdown. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

Q39. Are employees who are injured while on furlough or leave without pay (LWOP) eligible to receive workers' compensation?

A39. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Payments Upon Separation from Federal Service

Q40. If there is a "shutdown" furlough as a result of a lapse in appropriations, may employees who are separating prior to the expiration of the continuing resolution receive a lump-sum payment for their unused annual leave? Are the funds paid out of the current continuing resolution or the new annual appropriation's monies?

A40. The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. For example, if an employee separates on April 15, 2011, the money to pay the lump-sum annual leave payment is covered under the current continuing resolution.

In the event of a lapse in appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of government operations. This may include the processing of payroll for the pay periods prior to the lapse in appropriations. A minimum number of payroll staff may be excepted from furlough for the minimum time required to process pay, including processing lump-sum annual leave payments paid from funds obligated before a lapse in appropriations.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

Q41. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?

A41. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the federal government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued

continuing entitlement to severance pay. If the recipient is reemployed by the federal government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as pay for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of agency operations, severance pay covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

Additional information on severance pay can be found at www.opm.gov.

Performance Awards and Within-Grade Increases

Q42. If performance management plans require the payment of performance awards to employees, can the payment be delayed until after a furlough?

A42. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If performance management plans require the payment of performance awards, payment may be delayed until after the furlough when funds are available.

Q43. Can within-grade or step increases for employees be denied or delayed?

A43. Within-grade and step increases for General Schedule (GS) and wage employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in step 1, 2, or 3 of the grade who is furloughed for more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406 (b)).

Documentation of Furlough

Q44. If I am in furlough status or excepted from a furlough, how do I input my time in WebTA?

A44. Furloughed employees should be entered on the timecard as "LWOP-Furlough." For those designated as "excepted" from a furlough, time should be entered by the employee

on the timecard as regular base pay for days worked. Additional WebTA guidance will be forthcoming.

HUMAN RESOURCES DIVISION
TOP ISSUES RELATED TO
FBI EMPLOYEE STATUS IN A GOVERNMENT SHUTDOWN

Contact: HRD Assistant Director Dave Bennett, (202) 324-5430

Employee Status

- **Excepted:** All employees assigned to Field Offices and Legal Attaché Offices and all employees participating in New Agents Training and the Intelligence Basics Course are excepted from a government furlough. FBI headquarters management has determined which headquarters employees will be excepted from a government furlough. If an excepted employee refuses to report for work after being ordered to do so, the excepted employee will be considered absent without leave (AWOL) and may be subject to disciplinary action.
- **Furloughed:** Employees who are furloughed are not permitted to work during the furlough period and will be placed in a temporary non-duty, non-pay status. If a Division seeks to recall a furloughed employee as a result of newly identified emergency activities, the Division Head must obtain prior approval from the Human Resources Officer. Division Heads must submit all such requests with justification to HRD. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Pay

- Obligations will be incurred for services performed by excepted employees during a lapse in appropriations and those excepted employees will be paid when a new appropriation or continuing resolution is passed and signed.
- Congress will determine whether furloughed employees will receive pay for the furlough period.

Leave/Absences

- For excepted and furloughed employees, all previously approved paid leave (i.e., annual, sick, court, administrative, etc.) is cancelled and new requests for paid leave will be denied.
- Employees are either in excepted status (i.e., working) or furloughed. If an excepted employee cannot report for work during the furlough, he or she must obtain approval to be absent from his/her Division/Office management. Thereafter, Division Heads must notify HRD and provide a justification to change the employee's status from excepted to furloughed.

Time and Attendance

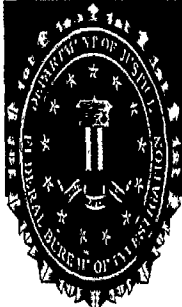
- All FBI time and attendance for pay period 7 is being processed and closed out. The National Finance Center will be operational during a lapse in appropriations to process pay for pay period 7 (March 27 – April 9, 2011). Employees will receive their pay for pay period 7 by the official pay date (April 21, 2011).

April 7, 2011



FBI Furlough

AD Dave Bennett
April 8, 2011



2011 FBI "Shutdown" Furlough Overview

Things to Note

b7E

- ALL employees will be furloughed unless performing an "excepted" function to include:
 - (1) emergency work involving the safety of human life or the protection of property;
 - (2) involvement in the orderly suspension of agency operations; or
 - (3) duties which are funded from sources other than the current Continuing Resolution.
- Field Office and Legal personnel are excepted
- HQ Divisions provided HRD excepted/furloughed personnel lists through SharePoint Site along with justifications by Division/Section
- Furloughed letters printed by ITSD, verified, and sent to HQ Divisions; Excepted employees will receive email
- Any request to recall an employee from furloughed status to excepted must go through HRD AD
- All leave requests for furloughed and excepted employees will be cancelled while under a government shutdown

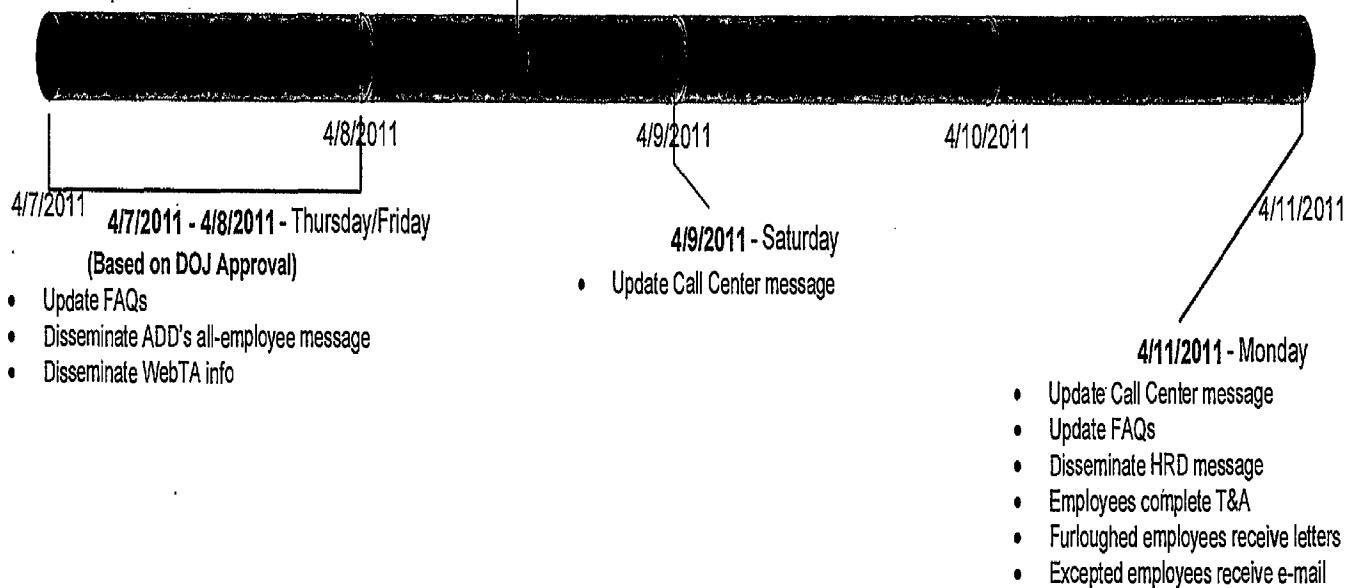
Excepted and Furloughed Personnel - Total FBI

	Onboard	Excepted	Furloughed	% Excepted	% Furloughed
Special Agent					
Intelligence Analyst					
Professional Staff					
Hdq					
Field					



4/8/2011

- Continuing Resolution ends at midnight



ADDITIONAL TASKS

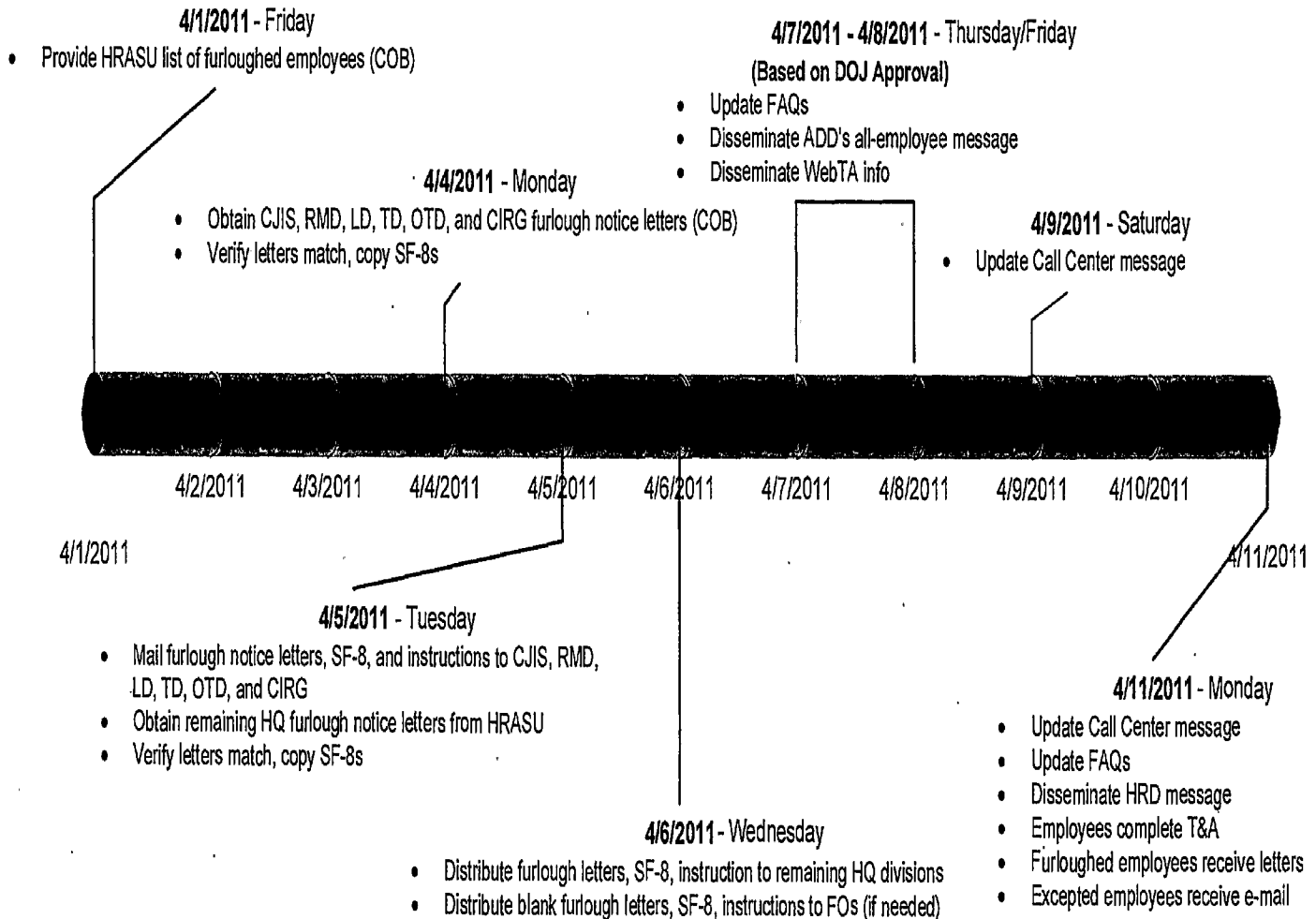
During Furlough

- Update Call Center message daily
- Update FAQs, when necessary
- Requests to change Furloughed employees to Excepted must be approved by AD HRD

Post-Furlough (after FY11 Appropriation or CR is passed)

- Update Call Center message
- Update HRD website
- Update FAQs
- Disseminate ADD's All Employee message
- Disseminate HRD message (if necessary)
- Process return-to-duty Personnel Actions
- Process WebTA corrections (if necessary)

FBI "Shutdown" Furlough Timeline



ADDITIONAL TASKS

During Furlough

- Update Call Center message daily
- Update FAQs, when necessary
- Requests to change Furloughed employees to Excepted must be approved by AD HRD

Post-Furlough (after FY11 Appropriation or CR is passed)

- Update Call Center message
- Update HRD website
- Update FAQs
- Disseminate ADD's All Employee message
- Disseminate HRD message (if necessary)
- Process return-to-duty Personnel Actions
- Process WebTA corrections (if necessary)

(Typed September 15, 1995)

MEMORANDUM TO ALL EMPLOYEES

RE: POSSIBLE FURLOUGH DUE TO A LAPSE IN APPROPRIATIONS

Attached is a letter from the Attorney General to All Department of Justice employees, dated September 12, 1995, captioned, "Notice of Possible Furlough Due to a Lapse in Appropriations." As we approach the beginning of Fiscal Year (FY) 1996, there have been indications that budgetary and policy differences between the Administration and Congress may delay the passage of FY '96 appropriations. In years past, we have faced a lapse in appropriations and even gone through agency shutdown procedures. Such shutdowns have never exceeded a day or two, and the appropriations bill which finally passed allowed us to restore employee pay retroactively.

In the last few days, there have been positive signs that we will avoid a lapse in appropriations this year. However, prudence dictates that the FBI -- and you as individuals -- make certain plans in the event that furloughs do occur. If furloughs occur and you are affected, you will begin to feel the impact on your personal finances on the pay day that falls on October 26, 1995.

We will make it a priority to keep you apprised of significant developments. However, quickly communicating any actual shutdown and return-to-work situations may be difficult since they may occur while you are not in a duty status. At such times, it will be your responsibility to stay informed of the situation through public news media and to return to work when funding has been restored.

Dep. Dir. _____
Chief of _____
Staff _____
Off. of Gen. _____
Counsel _____
Asst. Dir.: _____
Crim. Inv. _____
CJIS _____
Finance _____
Info. Res. _____
Insp. _____
Lab. _____
National Sec. _____
Personnel _____
Training _____
Off. of EEOA _____
Off. of Public _____
& Cong. Affs. _____
Director's Office _____

- 1 - [Redacted] room 6012
- 1 - [Redacted] room 6012
- 1 - [Redacted] room 6050
- 1 - [Redacted] room 6159
- 1 - Policy Group, room 6053
- 1 - Manuals Desk, room 5447

DMS:dmb (8)

APPROVED: 

Director _____
Deputy Director _____

Crim. Inv. _____	Info. Res. _____	Training _____
Crim. Jus. Info. _____	Inspection _____	Office of EEO _____
Servs. _____	Laboratory _____	Affairs _____
Finance _____	National Sec. _____	Office of Public & _____
Gen. Counsel _____	Personnel _____	Cong. Affairs _____

66-02-2358
ENCLOSURE

MAIL ROOM ☐

Memorandum to All Employees

Re: Possible Furlough Due To A Lapse In Appropriations

In the event of a shutdown, official furlough decision notices will be issued to non-excepted employees. Only employees who perform "excepted" functions (i.e., whose duties involve the safety of human life or the protection of property) or whose salaries are paid from other than FY '96 appropriations will be permitted to work. You will be informed by your supervisor if your position falls in either of these categories.

All employees are to report to work on Monday, October 2, 1995. In the event of a lapse in appropriations or if no continuing resolution has been passed, employees will have three hours to shut down non-emergency operations. Only those employees deemed "excepted" will remain on duty.

The Department has established a Furlough Information Hotline to provide employees with furlough information. If furloughs become a reality, the hotline will be activated on October 1, 1995. The numbers will be (202) 514-1087 for callers in the Washington, D.C. metropolitan area and 1-800-521-6079 for long distance callers.

Attached are several pages of information which should answer many of the questions you may have on how furlough would affect your benefits, pay, leave, and other important matters. We will update this material as more information becomes available.

Questions concerning this matter may be directed to the FBI's Furlough Information Line at (202) 324-8800.

Louis J. Freeh
Director

Enclosures (2)



U.S. Department of Justice

325

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

1-96
1/17/96

(Typed January 16, 1996)

MEMORANDUM TO ALL EMPLOYEES

During the last month or so the FBI, like many other governmental entities, has been faced with unprecedented events regarding shutdowns, furloughs and various funding restrictions as the Congress and the Administration address our 1996 appropriations.

As I'm sure you are aware by now, on January 6, 1996, the Congress passed and the President signed a Continuing Resolution which effectively establishes the FBI's 1996 funding levels along with several other Department of Justice law enforcement entities. This legislation also restored our full workforce to duty and ensures full pay (including back pay) for the remainder of the fiscal year.

As we resume normal operations, I want to extend my sincere appreciation to each of you for the unwavering demonstration of dedication and professionalism that you displayed during this extraordinarily difficult time. While I recognize that the very nature of our mission presupposes adversity and we deal with it almost as a matter of course, situations such as a furlough can be particularly debilitating to employee morale and genuinely test the character of our workforce.

As I spoke to many of you in recent weeks and shared your frustrations regarding the uncertainties that this year's appropriations process entailed, particularly over the holiday season, I was continuously heartened by the resolve and commitment that you demonstrated to ensuring the public safety and sustaining the work of the FBI. I know that many of you suffered very real personal hardships and faced considerable anxiety regarding the financial well being of your families. I am particularly grateful for your diligence and patience in this situation.

TJC

66-02-2365-JDS
ENCLOSURE

1-94

1/17/96

(Typed January 16, 1996)

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During the last month or so the FBI, like many other governmental entities, has been faced with unprecedented events regarding shutdowns, furloughs and various funding restrictions as the Congress and the Administration address our 1996 appropriations.

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Dep. Dir. _____
Chief of _____
Staff _____
Off. of Gen. 1 -
Counsel 1 -
Asst. Dir.: _____
Crim. Inv. 1 - Manuals Desk, Room 5447
CJIS _____
Finance _____
Info. Res. TJC:mkr (6)
Insp. _____
Lab. _____
National Sec. _____
Personnel _____
Training _____
Off. of EEOA _____
Off. of Public _____
& Cong. Affs. _____
Director's Office _____

MAIL ROOM ☒

66 02 2365
ENCLOSURE

MEMORANDUM TO ALL EMPLOYEES

Since becoming Director of the FBI some two years ago, I have witnessed a number of what may be called defining moments when the very character and fabric of our employees were put to the test. On each occasion you have responded and reestablished those attributes that make the FBI the preeminent law enforcement organization in the world. The last several weeks have been no exception.

Director Signed

Louis J. Freeh
Director

Director _____

(06/01/1995)

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b7C

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/8/1995

To: Richmond

Attn: All Employees

From: SAC Stanley Klein

Approved By: Klein Stanley

Drafted By: [REDACTED]:lnm

Case ID #: 66F-RH-39187

Title: WEEKLY MEMO

Synopsis: Weekly newsletter distributed to all employees.

Details:

Personnel Changes:

-SAC Thomas F. Jones, Cleveland, will retire effective 12/29/95;
[REDACTED] CID, designated ASAC, Salt Lake City;
[REDACTED] OPCA, designated Legat, Montevideo.

Furlough Matters: By teletype dated 12/6/95, the Bureau provided the following information regarding the revised contingency plans for FBI operations in the event of a lapse in appropriations:

By letter to the Attorney General dated 11/30/95, the Director officially requested her consideration of 3 options. The first option seeks total exemption for the employees of DIAP agencies. The second option requests that at a minimum, "field operations" of DOJ law enforcement agencies and their headquarters functions that provide direct support to field operations be deemed excepted. The final option seeks a specific continuing resolution for the DOJ law enforcement agencies.

In the interim, the Director has instructed the Personnel Division to reformulate the FBI's contingency plan, under the provisions of the Antideficiency Act. The revised plan will provide that all field office functions and those Headquarters functions that provide direct support to the field operations be deemed excepted. This revised contingency plan will be submitted to the DOJ for approval. We will be notified as soon as a new plan is approved.

From the Suggestion Box: A suggestion has been made from one of our employees that we discontinue recycling newspapers. The collection of these newspapers has been the responsibility of the person handling the mail each day. This person also has the responsibility of taking the papers to the recycling center. Since this process is time consuming and the support personnel handling this function find it burdensome, it is being discontinued effective Monday, 12/11/95.

Flu Shots: On Thursday, 12/14/95, from 9:00 AM until 11:00 AM, [redacted] from Retreat Hospital will be in the office (lounge) to administer flu shots to those who signed up. Since this will be the only day these shots will be administered, you are requested to ensure you will be in the office during the above time period. If you have any questions, please contact Debbie Propst, Ext. 8066.

T&A Matters: Please enter the following codes on your register for sick leave (a sheet with this information has been placed near the sign-in registers for future reference):

- M (medical appointments);
- S (sickness);
- I (injury);
- H (hospitalization);
- P (pregnancy);
- C (contagious disease - family member);
- O (other - when you do not wish to specify on your register; you must verbally advise your supervisor);
- F (family member or close others - illness - Family Friendly Leave Act);
- D (death of family member or close others - Family Friendly Leave Act);
- A (adoption).

Other FBI News: On 11/30/95, [redacted] File Assistant, IRD, passed away of respiratory failure due to pneumonia. He was 45 years of age and is survived by his mother and a sister.

Thought For The Week: "There is no good arguing with the inevitable. The only argument available with an east wind is to put on your overcoat." - James Russell Lowell

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(06/01/1995)

b6
b7c

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 11/14/1995

To: Albuquerque

Attn: SAC Thomas J. Kneir

ASAC [REDACTED]

From: Albuquerque

Support Services Unit #1

Contact: SAS [REDACTED] Ext. 2210

Approved By: [REDACTED]

Drafted By: [REDACTED] rag

Case ID #: 66F-AQ-42098

Title: LAPSE IN GOVERNMENT APPROPRIATIONS WHICH HAS REQUIRED A SHUTDOWN OF THE FEDERAL GOVERNMENT AND THE FURLOUGH OF CERTAIN FBI PERSONNEL

Synopsis: 10 support employees from the Albuquerque Division were furloughed 10/14/95.

Details: Per instructions set forth in Bureau teletype to All Field Offices, 11/14/95, the following support personnel of the Albuquerque Division were furloughed at 11:15 AM, 11/14/95:

<u>NAME</u>	<u>TITLE</u>	<u>EOD</u>
[REDACTED] (Part Time)	Office Automation	12/15/91
	File Assistant	12/29/91
	Office Automation	1/1/91
	Draft Cashier	12/2/90
	Secretary (Gallup RA)	12/20/91
[REDACTED] (Part Time)	Security & Complaint Assistant	10/10/91
	Training Instructor	12/14/87
	File Assistant	8/5/91
[REDACTED]	File Assistant	9/8/91

(06/01/1995)

b6
b7c

FEDERAL BUREAU OF INVESTIGATION

To: Albuquerque From: Albuquerque
Re: 66F-42098, 11/14/1995

[REDACTED] Secretary (Santa Fe 12/29/91
RA)

All employees were advised of the provisions of above referenced teletype and all employees executed Furlough Decision Notices.

SCA [REDACTED] was advised telephonically and advised as soon as possible he should report to the Albuquerque Division to officially sign the Furlough Decision Notice.

Secretary [REDACTED] was advised telephonically and faxed a signed Furlough Decision Notice to Albuquerque, 11/14/95.

File Assistant [REDACTED] was advised telephonically and faxed a signed Furlough Decision Notice to Albuquerque, 11/15/95.

Secretary [REDACTED] was advised telephonically and returned a signed Furlough Decision Notice, 11/14/95.

All employees were provided with an Appeal Form and advised of provisions for outside employment and unemployment compensation.

CC: 1 - SAC
1 - ASAC
1 - AO
1 - SAS
1 - SAS [REDACTED]

♦♦

To: Albuquerque From: Albuquerque
Re: 66F-42098, 11/14/1995

WORK COPY ROUTING SHEET

CC: 1 - SAC
1 - ASAC
1 - AO
1 - SAS
1 - SAS

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♦♦

(06/01/1995)

b6
b7C

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/15/1995

To: Albuquerque

Attn: All Employees

From: AO [REDACTED]

Support Services Unit

Contact: AO [REDACTED] Ext. 2200

Approved By: [REDACTED]

Drafted By: [REDACTED]:rag

Case ID #: 66F-AQ-42098

Title: LAPSE IN GOVERNMENT APPROPRIATIONS
SHUTDOWN OF FEDERAL GOVERNMENT
FURLOUGH OF FBI PERSONNEL

Synopsis: Employees desiring information re furlough issues may contact FBI's Furlough Information Hotline: (202) 324-8800.

Details: The FBI has established a Furlough Information Hotline (202) 324-8800 to assist employees desiring information regarding furlough issues. This line will be staffed until 8:00 PM Eastern Standard Time 11/13/95 and beginning at 7:00 AM Eastern Standard Time, 11/14/95.

In addition, the Department of Justice (DOJ) has activated a Furlough Information Hotline (800) 521-6079.

AO [REDACTED] has been designated the point of contact for the Albuquerque Division re furlough matters.

CC: 1 - SAC
1 - ASAC
1 - Supervisor #3
1 - Supervisor #4
1 - Supervisor #5
1 - SSRA
1 - Each Employee

(06/01/1995)

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FEDERAL BUREAU OF INVESTIGATION

To: Albuquerque From: AO [REDACTED]
Re: 66F-AQ-42098, 11/15/1995

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To: Albuquerque From: AO [REDACTED]
Re: 66F-AQ-42098, 11/15/1995

WORK COPY ROUTING SHEET

CC: 1 - SAC
1 - ASAC
1 - Supervisor #3
1 - Supervisor #4
1 - Supervisor #5
1 - SSRA
1 - Each Employee

♦♦

DATE: 11/14/95

MEMORANDUM TO ALL NON-EXCEPTED EMPLOYEES

RE: FURLOUGH DECISION NOTICE

Reference is made to Memorandum to All Employees, dated 9/15/95, captioned, "Possible Furlough Due to a Lapse in Appropriations."

This is to inform you that the President has not signed the Department of Justice's (DOJ) appropriations bill for fiscal year (FY) 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations. Consequently, the FBI was without funds effective 11/14/95.

Under the Antideficiency Act, no obligations may be incurred in the absence of appropriations except for the protection of human life or property, the orderly suspension of operations, or as otherwise authorized by law. Because your services are no longer needed for orderly suspension of operations and you are not engaged in excepted or emergency activities, you are being placed in a furlough status. If employees are being retained in your office, they are performing excepted activities as defined and approved by the Office of Management and Budget.

The furlough status is effective 11/14/95. You should listen to public broadcasts and when you hear that a continuing resolution or a FY 1996 appropriation for the Department of Justice has been approved, you will be expected to report to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 752.404(d)(2).

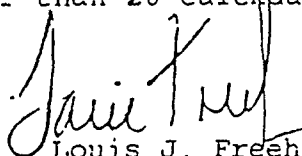
During the furlough period, you will be in a nonpay, nonduty status. Also during the furlough, you will not be permitted to assist the FBI or other federal agencies as an unpaid volunteer, and must remain away from your workplace unless or until recalled. Since leave cannot be granted on a nonworkday, all annual leave, sick leave, court leave, or leave for bone marrow or organ donation is canceled effective 11/14/95, through the duration of the furlough period. Employees who serve as witnesses or jurors on furlough days may receive compensation only as defined in the referenced communication to all employees.

Memorandum To All Non-Excepted Employees
Re: Furlough Decision Notice

The DOJ has established a Hotline to provide employees with furlough information. Callers from the Washington, D. C. metropolitan area should dial (202) 514-1087. For long distance callers, the number is 1-800-521-6079. The FBI's Furlough Information Line is (202) 324-8800.

If you are a preference eligible employee, are serving in a permanent appointment, and have completed one year of continuous service in the same or similar position(s), you may appeal this action to the Merit Systems Protection Board (MSPB). You have the right to be represented in this matter by an attorney or other person of your choice. If you wish to appeal this action to the MSPB, you may not file until the day after the effective date of the furlough, and must file the appeal within 30 calendar days after the effective date of your furlough. To obtain a copy of the MSPB appeal form, you may either contact the MSPB or obtain a copy of the form from your division management.

Career appointees to the Senior Executive Service (SES) are specifically excluded from the statutory definition of "preference eligible," under 5 USC § 2108(3). SES career appointees adversely affected may appeal this action to the Director. If they wish to appeal this action, they may not file the appeal until the day after the effective date of the furlough, and must file not later than 20 calendar days after the effective date.


Louis J. Freeh
Director

I acknowledge receipt of this decision.



Employee's Signature



Print your name

11/14/95
Date

DATE:

12/18/95

MEMORANDUM TO ALL NON-EXCEPTED EMPLOYEES

RE: FURLOUGH DECISION NOTICE

Reference is made to Memorandum to all Employees, dated 9/15/95, captioned, "Possible Furlough Due to a lapse in Appropriations."

It is to be noted that the President has not signed the Budget for the fiscal year 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations. Employees are advised that the President has not signed the Budget for the fiscal year 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations.

5/18/95

Employees are advised that the President has not signed the Budget for the fiscal year 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations. Employees are advised that the President has not signed the Budget for the fiscal year 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations. Employees are advised that the President has not signed the Budget for the fiscal year 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations.

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12/18/95

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FEDERAL BUREAU OF INVESTIGATION
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DELETED PAGE INFORMATION SHEET

No Duplication Fees are charged for Deleted Page Information Sheet(s).

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